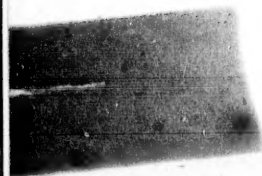


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THE  
DIPLOMACY  
OF THE  
**UNITED STATES.**

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BEING  
AN ACCOUNT OF  
*The Foreign Relations of the Country,*  
FROM THE FIRST TREATY WITH FRANCE, IN 1778, TO THE  
PRESENT TIME.

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SECOND EDITION—WITH ADDITIONS.  
By THEODORE LYMAN, JR.

IN TWO VOLUMES.

VOL. I.

BOSTON:  
WELLS AND LILLY,—COURT STREET.

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## ADVERTISEMENT

TO THE

## FIRST EDITION.

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THIS work is intended to give a view of the Foreign Relations, an account of the policy pursued, or, as it is sometimes termed, a diplomatic history of the country, from the first intercourse of the Government with Europe in 1776—7—8, to the end of the year 1814. We have selected that period for the close of the "account," as a general pacification then took place, and those considerations, which, during the wars of the French revolution, gave so much importance to our negotiations abroad, were, in consequence of the state of peace, entirely put at rest.

We have given a condensed exposition of some of the important principles of the Laws of Nations, brought into discussion since the year '92, though the nature of the work has not permitted an extended dissertation on any of those topics.

It is proper to observe that, in preparing this work, great use has necessarily been made of the collection of American state papers, and of the journals of Congress, both of the Confederation, and of the present government, together with the documents, debates, &c. to be found in the Parliamentary History of Great Britain, and other works of that description. The valuable collections of the Ebeling and Warden libraries on American subjects, now in the possession of Harvard University, and the excellent collection of American tracts in the Athenæum in this town, may be consulted to advantage on any topic, relative to this country.

*Boston, April 1826.*

**ADVERTISEMENT**  
**TO THE**  
**SECOND EDITION.**

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IN the present edition this work has been continued to the beginning of the year 1828, including an account of our relations with the Barbary Powers and the South American states. That part, which extends to the treaty of Ghent, is now presented in a second edition with considerable additions. Since the publication of the first volume, we have had the advantage of consulting the secret correspondence of our ministers and commissioners abroad during the Congress of the Confederation, as well as the papers of some eminent citizens, that have been employed on diplomatic missions by the Federal government. We take this opportunity to express the great obligations we are under to those gentlemen, by whose obliging attention we have been permitted to examine many valuable letters and documents.

In the arrangement of the work, the different subjects have been treated, as far as was practicable, in a chronological order, with the exception of Sweden and Denmark. The negotiations of the United States with those powers have been so limited since the treaty of Ghent, that it has not been thought advisable to devote separate chapters to their consideration.

In the appendix to the second volume will be found, besides other matter, the laws, regulating the privileges of foreign ministers in this country as well as the pay and emoluments of our own, together with the principal important acts, relative to discriminating importation duties and tonnage rates.

*Boston, October 1828.*

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# TREATIES, &c.

## CHAPTER I.

### PRELIMINARY REMARKS. CONFEDERATION, &c.

*Powers of First Congress as to Foreign Relations defective—Adoption of Confederation—Powers of Constitution of '89—Powers of House of Representatives as to Treaties—Foreign business first done by Secret Committees, very laborious—Department for Foreign Affairs established—Address of letters—First Secretary—Salary—Department under the Constitution—One of the Cabinet—Right of President to remove—United States never sent or received an "Ambassador"—Rules for reception—Diplomatic Agents of the Confederation—Expenses of the Diplomatic Corps under the Confederation—Salaries, &c. under the Constitution—Private instructions to Ministers—Gold Medal for Foreign Ministers—Ceremonial of first Minister very difficult to arrange—Somewhat ludicrous—Extract from Secret Journals—Present mode of accrediting.*

WE propose, in this chapter, briefly to recite the power of Congress under the confederation of '78, and of the government under the constitution of '89, in regard to the relations of the country with foreign states, together with such circumstances, as properly belong to the management of foreign affairs. It is well known, that the first assembly of delegates from the thirteen colonies, or parts of colonies, was held in September '74, in Philadelphia. The meeting was convened on the proposition of the Province of Massachusetts Bay; and was annually renewed by a vote of the Congress

itself, till 1778, when the different colonies or provinces, having instructed their delegates to sign the articles of "Confederation and perpetual Union," agreed on by Congress in the preceding November, an organized government, usually known by the name of the *Confederation*, was established. Before this period, the delegates to the Congress acted by the special instructions of the Province Legislatures, or of the committees of the people,—by whom they were chosen. These instructions were of various import;—some delegates, indeed, were not furnished with any powers whatever;—their discretion was unlimited. But in general the representatives were authorised to consult for the public good and general welfare, either by securing the liberties of the provinces, or by establishing a just and safe commercial arrangement with the mother country. A Congress, thus composed, was not invested with constitutional authority. Even, if the instructions of the delegates had been binding on their respective legislatures, the different legislatures would not have been bound in an equal degree; for some delegates were without instructions, and to those, who were furnished with them, a great variety of powers were given. The colonies, or provinces, were not parties to any instrument; they did not jointly agree to support any one measure; much less the great system of measures by which the revolution war was conducted. But the exigency of the case, the danger of the country, the necessity of preservation, supplied the deficiencies of form. The Congress of '74 did not appear to believe, that a war would take place—they did not expect a separation from the mother country—they took no direct, immediate measures to resist, by force, the unjust pretensions of the British government. This Congress remained in session six weeks with closed doors. They adopted a non-importation, non-exportation, and non-consumption agreement—they prepared a petition to the king—and an address to the people of Great Britain;—public documents, which will always be admired, as long as good writing, manly sense, and just practical notions, both of civil and political liberty, merit applause. The Congress of '75 entered upon

the war, and, from the time General Washington was appointed to command the continental forces to the confederation in '78, they levied men, borrowed money, sent ministers, concluded treaties, and performed most of the acts of a sovereign government. In '78, as we have already said, the confederation\* was adopted by the thirteen colonies, under the title of the "United States of America." This is the date of a constitutional government in this country. Whether as parties to this instrument, or to the act of Union of '89, the states severally and mutually pledged their faith, in as solemn a manner as could be done, to abide by the determination of the United States in Congress assembled on all questions that, by the confederation or the constitution, were subjected to their deliberation and control. This was a regular contract, obligatory in an equal manner, and to a defined extent. We shall only mention the provisions of the first "Union" that relate to the subject of this work.

"The United States, in Congress assembled, shall have the sole and exclusive right and power—Of determining on peace and war, except in the cases mentioned in the sixth article—Of sending and receiving ambassadors—Entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the le-

\* The idea of a confederacy was not altogether new. A scheme of this sort was discussed in a meeting of delegates at Albany in 1754, though for a different purpose. The king in council rejected the application. In July '75, a year before the Declaration of Independence, Congress took the matter of a confederacy and union into consideration, the inconvenience and even fatal danger of their actual condition being abundantly apparent. The first sketch was proposed by Dr. Franklin, a member from Pennsylvania. This did not differ materially from the articles afterwards agreed on, though America could, by no means, at that period, be considered as separated from England. An amended copy of this scheme was afterwards reported by a committee in July '76. This is said to be in the handwriting of Mr. Dickinson, the well known author of the Farmers' Letters. It is evident, Congress did not think it important to adopt articles of perpetual union till a reconciliation with Great Britain became utterly hopeless. The articles were extremely discussed; and were finally accepted in November 1777.

gislative power of the respective states shall be restrained from imposing such imports and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever"—  
"To borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money, so borrowed or emitted"—  
"The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy—unless nine states assent to the same."

Each state had one vote ; but no state could have more than seven delegates in the Congress.

Peace having been made, the nation was speedily convinced that the confederation was altogether inadequate in all matters of trade, for all purposes of revenue and commerce, and of intercourse of every description with foreign states. The present constitution was adopted, and went into operation on the 4th of March 1789. Under this instrument, Congress has power to "lay and collect taxes"—  
"to borrow money on the credit of the United States"—  
"to regulate commerce :"—but the "President has power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers," &c. This is the mode in which the constitution directs that foreign intercourse shall now be maintained. Treaties are the supreme law of the land, and all courts must take notice of them. The judiciary cannot declare a treaty to have been violated and therefore void. This power belongs solely to Congress ; but it is not settled, whether

the courts have not power to declare an article of a treaty unconstitutional.

"In the year 1796, after the treaty with Great Britain was ratified by the President and Senate, and was proclaimed by the President, it became a question how far, under the constitution, a treaty was binding on Congress as a legislative body. In the discussion of this question, in the House of Representatives, it was contended on the one hand, that a treaty was a contract between two nations, which, when made by the President, by and with the advice and consent of the Senate, was binding on the nation, and that a refusal by the House of Representatives to carry it into effect, was breaking the treaty and violating the faith of the nation. On the other hand it was contended, that a treaty which required an appropriation of money, or any act of Congress to carry it into effect, was not, in that respect, obligatory till Congress had agreed to carry it into effect, and they were at full liberty to make or withhold such appropriation or act, without being chargeable with violating the treaty, or breaking the full faith of the nation. Accordingly the House of Representatives passed a resolution calling on President Washington to lay before them the instructions to the Minister (Mr. Jay), who had negotiated the treaty with Great Britain, and the correspondence and documents, except so far as on account of the pending negotiation, they were improper to disclose. The President declined a compliance with the request, stating, among other reasons, that a treaty duly made by the President and Senate, became the law of the land and was obligatory; that the assent of the House of Representatives was not necessary to the validity of a treaty, and, therefore, the papers, requested, could not come under the cognizance of the House of Representatives, except for the purpose of impeachment, which was not stated to be their object. The House of Representatives thereupon passed resolutions, disclaiming the power to interfere in making treaties, but asserting their right, whenever stipulations were made on subjects committed to Congress by the constitution, to deliberate on the expediency of carrying them into effect; and in legislating on several treaties then before them, they struck out the words "that provision ought to be made by law," and substituted words, which declared merely the expediency of passing the necessary laws. In the session 1815, 16, the question, as to the effect of



a treaty, arose again in Congress, and was elaborately discussed in both branches. A commercial treaty had been made at London, in the month of July preceding, between the United States and Great Britain, by which it was agreed to abolish the discriminating duties on British vessels and cargoes, then existing under the acts of Congress; and a bill was passed in the House of Representatives particularly enacting the same stipulations as the treaty contained. But it was rejected in the Senate, that body having passed a bill of their own, which simply declared that so much of any act of Congress, as was contrary to the treaty, should be deemed and taken to be of no force or effect. This bill was amended, in the House, by striking out the words "and declared," and substituting the original bill which the Senate had rejected; these amendments were, however, rejected in the Senate, and the difference between the two houses, terminated in the appointment of committees of conference, by whose recommendation the above mentioned amendments of the House were relinquished, and the bill passed as proposed by the Senate in a declaratory shape, with some modifications not affecting the principles in dispute."\*

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#### DEPARTMENT OF FOREIGN AFFAIRS.

The Congress, or Government, during the confederation, consisted of but one branch or house. The number of the delegates was usually between fifty and sixty.† It was a legislative body, and its business, both foreign and domestic, in the outset, was done altogether by committees. They had originally no executive officers. The powers of the government were not then distributed in the beautiful manner we have since seen them, under the present constitution, but were all assembled or concentrated in one body or single department. This circumstance, connected with the state of the nation, must have made the office of delegate,

\* Sergeant.—Constitutional law.

† Fifty-six signed the Declaration of Independence.

during the revolution war, exceedingly laborious and responsible.

The first committee to undertake the foreign business of the country was instituted in November '75. It was a secret committee, and called the committee of "foreign correspondence." Subsequently, it was called the committee of foreign affairs, and was provided with a secretary. This committee did a great deal of work; they had the management of all the foreign correspondence, then voluminous, and of all negotiations, particularly those that led to the treaties with France and Holland.\* But the evils and great inconveniences of this mode of conducting the delicate, complicated, and very difficult transactions, in which the United States were engaged with other nations, a description of business daily accumulating in amount, were soon felt and will readily be perceived. The committee was abolished in January '81, and an office called the "Department of Foreign Affairs" established in its place. The necessity of this change is well explained in the preamble to the report, made on the occasion.

"The extent and rising power of these United States, entitle them to a place among the great potentates of Europe, while our political and commercial interests point out the propriety of cultivating with them a friendly correspondence and connexion. That, to render such an intercourse advantageous, the necessity of a com-

\* One of the greatest difficulties consisted in the safe conveyance of letters during the war. We had neither packet boats, nor regular channels of conveyance. In order to avoid suspicion a general direction, in regard to the form of letters and addresses, was given in these words:—

"When you write to me, please to write upon common post paper, to fold your letters as nearly in the size and after the manner of this as may be—to seal them with wafers instead of wax, and to send them by the way of Holland to the care of Mr. Adams, or to Messrs. De Neufville and Son, or Messrs. Ingraham and Bromfield of Amsterdam, and to be careful not to swell them unnecessarily above the size of common mercantile letters. If these particulars are not attended to, all the precautions, I can take, will not keep them out of the hands of the ministry."

potent knowledge of the interests, views, relation and systems of those potentates is obvious. That a knowledge in its nature so comprehensive is only to be acquired by a constant attention to the state of Europe, and an unremitting application to the means of acquiring well grounded information. That Congress are, moreover, called upon to maintain with our ministers at foreign courts a regular correspondence, and to keep them fully informed of every circumstance and event, which regards the public honour, interest and safety. Whereupon, Resolved, that an office be forthwith established for the department of foreign affairs, to be kept always in the place, where Congress shall reside. That there shall be a Secretary for the despatch of the business of the said office, to be styled "Secretary for Foreign Affairs." That it shall be the duty of the said Secretary to keep and preserve all the books and papers belonging to the department of foreign affairs, to receive and report the applications of all foreigners, to correspond with the ministers of the United States at foreign courts, and with the ministers of foreign powers, and other persons for the purpose of obtaining the most extensive and useful information, relative to foreign affairs to be laid before Congress, when required, also to transmit such communications, as Congress shall direct, to the ministers of these United States and others at foreign courts and in foreign countries; the Secretary shall have liberty to attend Congress, that he may be better informed of the affairs of the United States, and have an opportunity of explaining his reports respecting his department."

In the following year the style of this officer was altered. He was called "Secretary to the United States of America for the department of foreign affairs," and was allowed 4000 dollars, exclusive of the expenses of his office. Robert R. Livingston of New-York was the first Secretary of State; he was chosen in August '81, but having resigned in June '83, John Jay, at that time in Europe, was elected to succeed him. Mr. Jay remained in office till the adoption of the constitution. This office was not expressly recognised by the confederation; no provision having been made in that instrument for establishing by name this or any other department, but it was enacted by a resolution, as the present department of state has been subsequently created by a

law of Congress. The institution of these departments was authorized by the 9th article of the confederation—"the power to appoint such civil officers as may be necessary for managing the general affairs of the United States." This office was the foundation of the present department of State, established, by law in '89, no provision having been made for it in the constitution, (except the general one under article 1. sec. 8. provision 17.) It was originally called the "Department of Foreign Affairs," and the officer, the "Secretary for the Department of Foreign Affairs," terms subsequently altered to "Department of State," and "Secretary of State." The duties of this officer have not materially varied in consequence of the change of government. The Secretary of State now forms one of the Cabinet, and in the whole conduct of that department, receives his instructions from the President. No arrangement having been made by Congress for the appointment of this officer, the President exercises the right, conferred on him in other cases, of making a nomination in the usual form to the Senate. He has also under a construction of the constitution (now admitted,) the right of removing this officer, or the head of any other department at his pleasure. The law of '89 is considered as having settled this important point. The bill did not pass without an able and earnest opposition, but as the clause giving the power of removal to the President, was stricken out, the appearance, even of conferring this right upon him by the Legislature, was removed, and it could be regarded as a quality only incident, under construction, to the right of nomination, as it regards all superior officers of the United States, "whose appointments" were "not otherwise provided for." The salary of the Secretary of State is now 6000 dollars. Of late years various matters have been referred to the examination, or the management of this officer, that do not in strictness belong to the Department of Foreign Affairs; for the duties of this department are not so specific, or easily defined, as those of either of the others. This circumstance has produced an accumulation of business, and it is probable the government will find it necessary to create a

fifth department, for the purpose of relieving the Secretary of State of all those affairs that do not properly belong to the Army, Navy, or Treasury. This might well be called the department of domestic affairs, or home department, perhaps a more significant and convenient name.

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### DIPLOMATIC CORPS.

The United States have never sent or received an "ambassador,"\* in the usual diplomatic sense of that term. Indeed, the form of our government appears entirely to forbid it, while we confine ourselves to the European meaning of the rank. An ambassador has a representative character;—he represents the person and dignity of his sovereign. "The preeminence of ambassadors manifests itself chiefly in the particular ceremonial of their reception in the country, where they are appointed to reside. They are entitled to speak at the audiences they obtain, with *heads covered*,—to keep a canopy or throne in their dwellings," &c. An ambassador is, of course, often employed to manage the affairs of his nation like other public ministers, but his representative character of the honour and dignity of the sovereign, constitutes in his particular case, a minister of the first rank. This latter quality an American minister cannot well possess, for he represents nothing but the nation. The government, it is true, has a right to require that ministers shall be received from them of the rank of ambassadors, but the distinction will obviously depend upon something different from the representation of the person of the sovereign. The English, we believe, are not much in the habit of employing *ambas-*

\* The Congress of 1783 introduced a slight difference in the ceremonial of receiving an *ambassador*. He was allowed to sit covered in their presence, and the President rose not only when he was introduced, but also when he read his address. Ministers did not enjoy these privileges.

sadors ; most of their ministers being envoys, with full powers. But there are certain courts in Europe to which it seems to be a sort of *etiquette* to send an *ambassador*. The sovereigns of the House of Bourbon, (France, Spain, and the two Sicilies) are usually represented at their respective capitals by a minister of this rank.

Difficulties, having arisen from the claims of ministers on the score of precedence, we find in the *Recueil des Pièces officielles*, (Tom. 8. No. 17.) an arrangement, signed by the eight powers,\* parties to the treaties of 1814—1815 on this subject. As it is quite short, and is now probably adopted in most of the European courts, we take this opportunity of translating it ; the provisions appear just ; they are at least very convenient.

"ART. 1. Diplomatic agents are divided into three classes. 1. Ambassadors, Legates, or Nuncios. 2. Envoys, Ministers and other agents accredited by the Sovereigns. 3. *Chargés d'Affaires*, accredited by the Department of Foreign Relations.

"ART. 2. Ambassadors, Legates, or Nuncios, are alone invested with a representative character.

"ART. 3. Diplomatic agents sent on a mission extraordinary, are not entitled, on this account, to a superior rank.

"ART. 4. Diplomatic agents of the respective classes take rank according to the date of the official notice of their arrival. The representatives of the Pope are not affected by this article.

"ART. 5. Each State shall determine upon an uniform mode of receiving diplomatic agents of the different classes.

"ART. 6. Neither relationship nor family or political alliances between courts confer rank upon their agents.

"ART. 7. The order in which the signatures of Ministers shall be placed in acts or treaties between several powers, that allow of the alternat, shall be determined by lot."

During the confederation, the public officers of the United States abroad were called, either *Chargés d'Affaires*, Commissioners, or Ministers Plenipotentiary. We are not aware

\* Austria, Spain, France, Great Britain, Portugal, Prussia, Russia and Sweden.

that the confederation ever received or employed an Envoy Extraordinary. At present the government has established by its practice three classes, viz. *Chargé d'Affaires*; Minister Plenipotentiary and Envoy Extraordinary. The Corps Diplomatic of this country in Europe now consists either of *Chargés d'Affaires* or Envoys Extraordinary with full powers.

The salaries of public ministers varied much under the confederation. At first no fixed compensation was allowed; but in October 1779 a salary of £ 2500 was established for the ministers in France, and of £ 1000 for the secretaries, in full for services and expenses. This rate, greater than the present remuneration, continued till '84, when Congress resolved that the salary of a minister should not exceed 9000 dollars; but it does not appear that an outfit was annexed. The confederation generally paid their ministers better than is now done; for the expense of living in Europe, particularly on the continent, has increased at least one half the last forty years. We have still remaining a report of the Secretary of Foreign Affairs on the expenses of his department in 1782,—in some respects an amusing document, though, as it regards the expense of the ministers, obviously quite loose and hasty.

"Dr. Franklin has a part of Mr. Chaumont's house at Passy, he keeps a chariot and pair, and three or four servants, and gives a dinner occasionally to the Americans and others. His whole expense, as far as I can learn, is very much within his income. Mr. Adams lives in lodgings; keeps a chariot and pair, and two men servants. He has hitherto retained a private secretary, who will, in the absence of Mr. Dana, it is presumed, be paid by Congress. I have lately heard that Mr. Adams was about to take a house. Mr. Dana's salary, even if he should assume a public character in a country where the relative value of money is so high, that if I am well informed, an elegant house may be hired for fifteen guineas a year, is very ample. Of Mr. Jay's manner of living, I have been able to give no account, but I should conclude from the price of the necessaries of life in that part of Spain in which he lives, from the port the Court and the people about it maintain, and above all, from its sitting in different parts of the



Kingdom, that to live in the same style with Dr. Franklin, his expenses must amount to nearly the double of theirs. But as every conjecture of this kind must be very uncertain, all I can do is to lay before Congress the relative expense, as far as I can learn it, between the different places at which the ministers reside, taking Philadelphia for a common standard. Paris, if wine, clothing, and the wages of servants are included, is about twenty per cent. cheaper than Philadelphia; Amsterdam, ten; and at Madrid, the expenses of a family are somewhat higher than at this place. But from the unsettled state of those who follow the court, their travelling equipage and charges must greatly enhance this expense. Congress will make their own deductions from these facts, after allowing for their inaccuracy.

"Annual expense of the Department of Foreign Affairs, exclusive of contingencies:—

"Secretary of the United States for the Department of Foreign Affairs . . . . .			\$4000
1st Under Secretary, Lewis R. Morris . . . . .			800
2d Under Secretary, Peter S. Du Ponceau . . . . .			700
Clerk, the Rev. Mr. Tetard . . . . .			500
			<hr/>
			\$6000
Dr. Franklin . . . . .	£2500 at 4s. 6d.		11,111. <sup>10</sup> / <sub>16</sub>
Mr. Jay . . . . .	2500 "		11,111. <sup>10</sup> / <sub>16</sub>
Mr. Adams . . . . .	2500 "		11,111. <sup>10</sup> / <sub>16</sub>
Mr. Laurens . . . . .	1500 "		6,666. <sup>10</sup> / <sub>16</sub>
Mr. Carmichael . . . . .	1000 "		4,444. <sup>10</sup> / <sub>16</sub>
Mr. Dana . . . . .	1000 "		4,444. <sup>10</sup> / <sub>16</sub>
Mr. Dumas . . . . .	200 Louis d'ors.		920.
			<hr/>
			57,308. <sup>10</sup> / <sub>16</sub>

Private Secretary to Dr. Franklin.

Private Secretary to Mr. Adams."

By the law of May 1810, the salaries of ministers were fixed at \$9000, and of chargés, at \$4,500, exclusive of one year's salary in the shape of outfit.

We are indebted to the kindness of a gentleman, formerly occupying a public station at a foreign court, for a copy of the personal instructions, given by the Department of State,



which we propose to insert here at length, for the purpose of filling up, by means of these private details, the outline of the diplomatic arrangement, we have attempted to present.

“DEPARTMENT OF STATE, WASHINGTON, 18—.

“Sir,—With this letter you will receive the following papers, documents and books, which will be found necessary or useful to you in the discharge of the mission, to which you have been appointed.

“1. A commission as Envoy Extraordinary and Minister Plenipotentiary.

“2. A letter of Credence to the King.

“3. A full power for negotiating a treaty of Commerce; to be used in case such a negotiation should be proposed.

“4. A Cypher, to be used as occasion may require, in your correspondence with this Department, or with any of the other Ministers of the United States in Europe.

“5. An engraved design of the Uniform worn by the Ministers of the United States, at foreign courts, on occasions when full dress is required.

“6. A letter of Credit upon the bankers of the United States at London, authorizing them to pay your draughts upon them for your salary, and the contingent expenses of the Legation. You will be careful, in availing yourself of this, not to exceed, in the whole amount drawn, the sum to which you may be entitled in account with the United States at the time of the draught.

“7. A set of the Laws of the United States, Bioren’s edition, with pamphlet copies of the laws of the subsequent sessions to this time.

“8. A volume containing the Commercial Regulations of the foreign countries, with which the United States have commercial intercourse: collected, digested, and published by order of Congress. Supplementary information upon the same subject being very desirable, you are requested to collect and communicate any such, as it may be in your power to obtain.

“9. A set of Niles’s Register.

“10. A set of Wait’s State Papers.

“All these books are for the use of the Legation; and at the termination of your mission are to remain with the *Chargé d’Affaires*, in case one should be left, or pass to your successor.

" 11. A Passport for yourself and your family.

" 12. A sample of despatch paper, and a set of lines.

" Your allowance, as limited by law, is nine thousand dollars a year for all personal and other expenses, with an outfit, equal to one year's salary, and a quarter's salary for your return. By a general rule the salary commences from the time of the Minister's leaving home, to proceed upon his mission, and ceases on his receiving notice or permission to return: after which the additional quarter's allowance takes place. The cost of gazettes and pamphlets transmitted to this office, of postage, stationary, necessary and customary presents to the menial attendants at court, and of the public functionaries, at your presentation, and on other established occasions (usually the Christmas, or New Year's days), are not considered, as included under the denomination of personal and other expenses, and will form, as contingencies of the legation, a separate charge in your accounts. But no contingent expenses are to be incurred without necessity, or in compliance with the established usages, and no charge of any other description will be admitted, unless warranted by express directions from this department. Exact vouchers in all cases of expenditures will be necessary for the settlement of your accounts: and as some of these incidental charges are of a nature, scarcely admitting of any other sort of voucher for every item, a separate account of them should be kept and certified by the secretary of the legation.

" These particulars are stated thus minutely, that you may be relieved from all doubts on the subject of your accounts, which, you will keep in remembrance, are to be regularly transmitted by duplicates for adjustment at the Treasury, at the close of every quarter, ending with March, June, September and December.

" Among the most important general duties of a Minister of the United States in foreign countries, is that of transmitting to his government accurate information of the policy and views of the government, to which he is accredited, and of the character and vicissitudes of its important relations with other European powers. To acquire this information, and particularly to discriminate between that which is authentic, and that which is spurious, requires steady and impartial observation, a free though cautious correspondence with the other Ministers of the United States abroad, and friendly, social relations with the members of the diplomatic body at the same court.

" In your correspondence with this Department, besides the current general and particular politics of the country, where you are to reside, you will be mindful, so far as you may find it convenient, to collect and transmit information of every kind, relating to the government, finances, commerce, arts, sciences and condition of the nation, which is not already known, and may be made useful to our own country. Books of travels, containing statistical, or other information of political importance, historical works, not before in circulation, authentic maps, published by authority of the state, or distinguished by extraordinary reputation, and publications of new and useful discoveries—will always be acceptable acquisitions to this Department. The expense of procuring and transmitting them will form, in your account, a separate charge to the Department. But no such charge of any considerable amount is to be incurred in any one account, without a previous express direction for it from this Department.

" It is the practice of the European governments, in the drawing up of their treaties with each other, to vary the order of naming the parties, and of the signatures of the plenipotentiaries in the counterparts of the same treaty, so that each party is first named, and its plenipotentiary signs first, in the copy possessed and published by itself: and in treaties, drawn up between parties, using different languages, and executed in both, each party is first named, and its plenipotentiary signs first in the copy, executed in its own language. This practice, having been accidentally omitted, on one or two occasions, to be observed by the United States, the omission was followed by indications of a disposition in certain European governments to question its application to them. It became, therefore, proper to insist upon it, as was accordingly done with effect. As it is understood to involve a principle, you will consider it as a standing instruction to adhere to this alternative, in the conclusion of any treaty, convention, or other document, to be jointly signed by you with the plenipotentiary of the other power.

" In the practice of our government, there is no immediate connexion or dependence between the persons, holding diplomatic and consular appointments in the same country; but by the usage of all the commercial nations of Europe, such a subordination is considered as of course. In the transaction of their official duties, the Consuls are often in necessary correspondence with their Minis-

ters, and are always supposed to be under their directions. You will accordingly maintain such correspondence with the consuls of the United States in , as you shall think conducive to the public interest; and in case of any vacancy in their offices, which may require a temporary appointment of a person to perform the duties of the Consulate, you are authorized, with the consent of the government, to which you are accredited, to make it, giving immediate notice of it to this Department.

“ Among the ordinary functions of an American Minister in Europe, is that of giving passports to citizens of the United States, who apply for them. They sometimes receive applications for such passports from the subjects of other countries; but as these are not regularly valid, they should be granted only under special circumstances, as may sometimes occur in the case of foreigners, coming to the United States. All passports should be gratuitously given, and may on some occasions be refused even to American citizens. Protections to seamen are not included under the denomination of passports, nor are they ever granted by public ministers.

“ A custom prevails among the European sovereigns, upon the conclusion of treaties, of bestowing presents of jewelry, or other articles of pecuniary value, upon the Minister of the power with which they were negotiated: the same usage is repeated upon the Minister's taking leave, at the termination of his mission. The acceptance of such presents, by Ministers of the United States, is expressly prohibited by the Constitution, and even if it were not, it can scarcely be consistent with the delicacy of intercourse with foreign powers, for the Ministers of the United States to receive from foreign princes, such favours, as the Ministers of those princes to the United States never can receive from this government in return. The usage, exceptionable in itself, could be tolerated only by its being reciprocal. It is expected by the President, that every offer of such present, which may in future be made to any public minister or other officer of this government abroad, will be respectfully, but decisively declined. This having been already a standing instruction to all the Ministers of the United States abroad for several years, the rule is probably known, so that no offer of such present will be made; but should there be reason to expect it, to avoid the apparent harshness of declining an intended favour,

informal notice, that it cannot be accepted, given in the proper quarter, may anticipate the necessity of refusal.

"You are requested to provide yourself with a sufficient supply of the despatch paper, in size and quality corresponding with the sample, herewith sent, to be exclusively used in your correspondence with this Department. It has been found highly convenient and useful to have the original despatches from our Ministers abroad bound up in volumes. For this purpose, with a view to uniformity, the despatches should be regularly numbered, and, with the copies made at the Legation of all papers transmitted with them, should be written on paper of the same dimensions,  $13\frac{1}{4}$  inches long,  $8\frac{1}{4}$  broad, with the edges uncut, and a margin of at least  $1\frac{1}{4}$  inch, round all its borders, for stitching and cutting off the edges without injury to the text. The lines transmitted, mark the margin within which the manuscript should be confined; of which these instructions, also, exhibit an example.

"Minute as these particulars appear, they are found to be very essential to the good order and convenience of business in the Department.\*

"I have the honour to be, with great respect, sir, your humble and obedient servant."

\* During the first term of General Washington's administration, presents of form were given to foreign Ministers;—it consisted of a chain and medal of gold. The die for the purpose was made in Paris, by the direction of Mr. Jefferson, as will be seen by the following letter.

"NEW-YORK, APRIL 30, 1790.

"It has become necessary to determine on a present, proper to be given to diplomatic characters on their taking leave of us, and it is concluded that a medal and chain of gold will be the most convenient. I am, therefore, to ask the favour of you to order the dies to be engraved with all the despatch practicable. The medal must be of 30 lines diameter, with a loop on the edge to receive the chain. On one side must be the arms of the United States, of which I send you a written description, and several impressions in wax, to render that more intelligible; round them as a legend, must be "The United States of America"—the device of the other side we do not decide on. One suggestion has been a Columbia (a fine female figure), delivering the emblems of peace and commerce to a Mercury, with the legend "Peace and Commerce" circumscribed, and the date of our

## CEREMONIAL OF RECEPTION.

In receiving the first Foreign Minister in 1778, various difficulties presented themselves to the consideration of Congress. The etiquette practised in the courts of Europe was probably known, or at least, could easily have been ascertained. But a foreign ceremonial of that description could in no way be made to apply to the actual condition of the American Congress. Neither regal with a monarch, nor a confederated republic with an executive to represent it, the single House of Delegates constituted the whole government. The foreign minister was addressed to the Congress, and by that body alone could be accredited. This part of the affair was plain and easily understood, but the details of the reception were seemingly difficult to arrange. Congress itself was the sovereign, independent body, to whom the minister was to be presented—it was the nation: but every member of it was a delegate from a sovereign and independent state, and possessing equal dignity and authority with every other member. Still it could only be approached as a body. Neither was Congress furnished with officers to perform the minor parts of the ceremonial of introduction. Their own members, who composed the nation, and each of whom represented a sort of nation, were obliged to be the actors or assistants in the scene.

M. Gerard, the first foreign envoy received by Congress, arrived in this country in the summer of 1778, a Minister Plenipotentiary. The form of his presentation obviously caused some embarrassment. The subject was regularly referred, like any other matter, to a committee, (Richard Henry Lee, Samuel Adams, Gouverneur Morris) and the

Republic, to wit, IV JULY MDCCLXXVI., subscribed as an exergue. But having little confidence in our own ideas in an art not familiar here, they are only suggested to you, to be altered, or altogether postponed to such better device as you may approve on consulting with those, who are in the habit and study of medals."

report of this committee was discussed *five days* by Congress, though the debates have not been preserved. The business was finally arranged with uncommon care and minuteness,—not perhaps in very good taste, nor with much simplicity; but the reader will be satisfied by the extracts we are about to quote from the order of the ceremonial, that Congress had not neglected the rights or pretensions of either party.

“Resolved, that the ceremonial for a Minister Plenipotentiary or Envoy shall be as follows. When a Minister Plenipotentiary or Envoy, shall arrive within any of the United States, he shall receive, at all places, where there are guards, sentries, and the like, such military honours as are paid to a general officer of the second rank in the armies of the United States. When he shall arrive at the place in which Congress shall be, he shall wait upon the President, and deliver his credentials, or a copy thereof. Two members of Congress shall then be deputed to wait upon him, when and where he shall receive audience of the Congress. At the time he is to receive his audience, the two members shall again wait upon him in a coach belonging to the States, and the person first named of the two, shall return with the Minister Plenipotentiary or envoy in the coach, giving the Minister the right hand, and placing himself on the left with the other member on the first seat. When the Minister Plenipotentiary or Envoy is arrived at the door of the Congress Hall, he shall be introduced to his chair by the two members, who shall stand at his left hand.”

“When the Minister is introduced to his chair by the two members, he shall sit down. His Secretary shall then deliver to the President the letter of his Sovereign, which shall be read and translated by the Secretary of Congress. Then the Minister shall be announced, at which time the President, the House, and the Minister shall rise together. The Minister shall then bow to the President and the House, and they to him. The Minister and the President shall then bow to each other, and be seated, after which the House shall sit down. The Minister shall deliver his speech standing. The President and the House shall sit while the Minister is delivering his speech. The House shall rise and the President shall deliver the answer standing. The Minister shall stand while the President delivers his answer. Having spoken, and being answered, the Minister and President shall bow to each other, at which time the House shall bow, and then the Minister shall be



conducted home in the manner in which he was brought to the House." "Those, who shall wait upon the Minister, shall inform him, that if, in any audience, he shall choose to speak on matters of business, it will be necessary, previously, to deliver in writing to the President what he intends to say at the audience, and if he shall not incline thereto, it will, from the constitution of Congress, be impracticable for him to receive an immediate answer. The style of address to Congress shall be, 'Gentlemen of the Congress.' All speeches, or communications, in writing, may, if the public Ministers choose it, be in the language of their respective countries. And all replies or answers shall be in the language of the United States. After the audience, the members of Congress shall be first visited by the Minister Plenipotentiary or Envoy."

No one can much applaud this arrangement; and in 1783 the ceremonial was wisely abolished, and a simple form substituted. Even in a government like our own, some slight degree of etiquette is occasionally necessary. It is proper and extremely convenient on such occasions, that every one should know what he has to do, for whatever is done by public functionaries before the public, should be done decently, and with dignity. The mode, just described, of receiving foreign ministers in the bosom of the assembly, was adopted by the National Convention in France; but they threw into the ceremony all the enthusiasm and exaltation that belonged to the times and the people, and, by their vivacity of character and well known susceptibility of excitement, contributed some portion of relief and animation to a scene, in itself, possessing neither grace nor dignity. Under the present constitution, the form of receiving and accrediting public ministers, is exceedingly simple. The individual is presented by the Secretary of State to the President in his House, (without any other ceremony than takes place on the occasion of a common visit) when his credentials are examined. The constitution directs the President to "receive ambassadors and other public ministers," but this government does not make the distinction, which, we believe, is maintained by the European states in relation to agents of the rank of *Chargé d'Affaires* and under, who are accredited only by the Secretary, or Minister of Foreign Relations; whereas all public officers, above the rank of *Chargé*, are accredited by the sovereign in person.



## CHAPTER II.

## TREATIES OF AMITY AND COMMERCE, AND OF ALLIANCE OF 1778, WITH FRANCE.

*Confederation little hopes, or means, of obtaining foreign assistance—Deane sent to France in '76 to obtain supplies—Remarkable letter of Vergennes—Franklin, Deane and Jefferson elected Commissioners in '76—Jefferson excused from going—Private aid early from France—Lee chosen in his place—Not officially received—Alarming situation—Private account of affairs at French Court—France disposed to withdraw all succour—Commissioners had secret Correspondence in London—News of Burgoyne's Surrender—Treaties signed—Account of Negotiation—Difficulty respecting Molasses—Commissioners presented at Court—Treaty of alliance dangerous—Great attention to Franklin—Anecdotes of him—Gerard appointed Minister to America—Sails in d'Estaing's Flag Ship—Presented to Congress—Cereimonial—Franklin elected to Versailles—Franklin complains of number of Ministers—Complimentary Letter to Luzerne—Misunderstanding between Adams and Vergennes—Franklin's request to return—Medal to Luzerne—Returns to America—Succeeded by Jefferson—De la Luzerne succeeds Gerard—Jefferson buys Deane's papers.*

THE means of intercourse with foreign nations, accessible to the confederation, were exceedingly limited; of the States in Europe, most able to afford assistance, little was known, except as enemies, and, while under the royal government, the provinces, entering with spirit into various wars against France, had powerfully and very cheerfully contributed to the conquest of the French possessions in North America. Indeed, one of the principal motives of the Convention at Albany, held in 1754, and consisting of commissioners from eight of the colonies, was to agree on a scheme of mutual protection against the encroachments of

the French and Indians, at that time always allies. The trade of the country, also, being constantly subject to the severities and restrictions of the colonial system, was confined, at the period of the Revolution, to Great Britain, the West Indies, Africa and Europe, south of Cape Finisterre. It is not, therefore, to be expected that the Congress could look abroad with much confidence, or hope of relief. The principal European states possessed colonies, and, on that account, America laboured under the peculiar disadvantage of seeking aid and encouragement from monarchies, whose policy would always lie in resisting the principles, the confederation asserted. Revolutions were, at that time, not so common as they have since become. The movement of the Americans was, with the exception of two slight affairs of the Pretender in Great Britain, the only instance of rebellion, that had occurred among civilized nations in that century. The governments of Europe, moreover, wore, at this crisis, the aspect of strength and prosperity; the throne was never, in appearance, more firmly established, or colonies of all descriptions in more complete subjection.

It is not likely that the American provinces, in the outset, expected assistance from abroad. The Revolution war, though events had been setting with a silent, but most unerring course, to that extremity since 1766, was little anticipated in 1774, the year of the first meeting of the Delegates in Philadelphia. But the war finally broke out in a manner most unexpected, and spread with a rapidity equally astonishing. It is the first illustration, we have in history, of the effects of strong excitement on a people, well educated and perfectly free. No one was then aware, till the moment of action, of the deep and universal sympathy, awakened throughout America, by the operation of a free press, and a free spirit of enquiry. The great mass of the people were certainly deceived as to the state of the public mind; they knew what their neighbours thought, but they probably had little conception, that men, living hundreds of miles apart from them, on the opposite frontiers of the continent, thought as they did, and were quite as prepared to act. There were

a few persons, endowed with a prophetic spirit, who doubtless foresaw the separation; but whether the Delegates themselves to the first Congress anticipated that event, whether they considered the Convention as an act of self-defence only, whether the Petition presented to the King in September '75, even after the commencement of hostilities, was done, under the expectation that harmony would be restored, it is most certain, they took no steps to form foreign alliances before the Declaration of Independence. We do not mean to be understood as saying that America had not received, as early as 1776, much foreign assistance. On the contrary, it was obtained, both from individuals in France, and from the French government.\* Private merchants, in several of the seaports, sent, secretly, cargoes of military stores to this country, under the expectation of getting an extravagant profit; precisely as we have seen, in our times, adventures of similar description despatched to the South American states. And to this period, we may trace the claim, since become exceedingly intricate, of Caron Beaumarchais. Silas Deane, of Connecticut was, also, sent privately to France, where he arrived in June 1776, to obtain supplies for Congress, and to ascertain the dispositions of the government. The 17th of September of the same year, Deane wrote to Robert Morris from Bourdeaux. "I shall send you in October clothing for 20,000 men, 30,000 muskets, 100 tons gunpowder, 200 brass cannon, 24 mortars, with shot, shell, &c. in proportion." In November, being directed by Congress to communicate the act of independence to France, he obtained credit to the amount of £500,000, ostensibly from a private company. But we do not find in his journal or correspondence the least trace of a direct intercourse with France, though no doubt can now remain of the part the French secretly took in the affairs of the Americans, even before the Declaration of their Independence. A letter of M. de Vergennes of May 2, 1776,

\* The Committee of Congress had a correspondence with a Mr. Dumas at Utrecht in April 1776;—they prepared instructions for him as early as December 1775.

addressed to the king, and preserved in the Archives du Corps Legislatif, affords all the proof necessary of the doings and dispositions of the French court. Never having seen a translation of it, we shall quote the whole :—

“ Sir, I have the honour of laying at the feet of your Majesty the writing, authorizing me to furnish a million of livres for the service of the English colonies. I add also, the plan of an answer I propose to make to the *Sieur Beaumarchais*. I solicit your approbation to the two propositions. The answer to *M. de Beaumarchais* will not be written in my hand, nor even that of either the clerks or secretaries of my office. I shall employ for that purpose my son, whose hand-writing cannot be known. He is only fifteen years old, but I can answer in the most positive manner for his discretion. As it is important that this operation should not be suspected, or at least imputed to the government, I entreat your Majesty to allow me to direct the return of the *Sieur Montaudouin* to Paris. The apparent pretext for that proceeding will be, to obtain from him an account of his correspondence with the Americans, though, in reality, it will be for the purpose of employing him to transmit to them such funds as your Majesty chooses to appropriate to their benefit, directing him, at the same time, to take all necessary precaution, as if, indeed, the *Sieur Montaudouin* made the advance on their own account. On this head, I take the liberty of requesting the orders of your Majesty. Having obtained them, I shall write to the *Marquis de Grimaldi*,\* inform him in detail of our proceedings, and request his cooperation, to the same extent.”†

The Declaration of Independence rendered a return to the connexion with the mother country utterly impracticable. Till that period, the confederation had forborne to augment the difficulties of a restoration of peace, by entering into engagements with other nations, even if governments could be found, who would assume the responsibility of becoming their allies while in a colonial state. Still, just before this time, America had received no certain intelligence of the inten-

\* Minister and Secretary of State of Despatches in Spain.

† *Flassan*, vol. vii.

tions of France, for we find in the month of May 1776, that the assembling a large fleet by the French in the West Indies, excited alarm, and measures were immediately adopted by Congress, in order to ascertain whether it was their design to act against the United States. But in the autumn of this year the disposition of some of the European powers, particularly France, having been fully disclosed, the attention of Congress was first turned to the consideration of treaties to be proposed to foreign states. And in September, a plan of one was agreed on.\* The terms do not differ materially from the provisions of the treaty afterwards made. On the 26th of September, Benjamin Franklin of Pennsylvania, Silas Deane of Connecticut, and Thomas Jefferson of Virginia, were elected, in a ballot of Congress, Commissioners to the Court of France. Mr. Jefferson, having been excused from going, on account of the state of his family, Arthur Lee of the same state was appointed on a subsequent day. They were furnished with a letter of credence, which, as it was the first given by an American Congress, we shall insert at length.

" The Delegates of the United States of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New-York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to all who shall see these presents, send Greeting ;—Whereas a trade, upon equal terms, between the subjects of his most Christian Majesty, the King of France and the people of these States, will be beneficial to both nations ;—Know ye, therefore, that we, confiding in the prudence and integrity of Benjamin Franklin, one of the Delegates in Congress, from the State of Pennsylvania, and President of the Convention of the said State, &c., Silas Deane, now in France, late a Delegate from the State of Connecticut ; and Arthur Lee, barrister at law, have appointed and deputed, and by these presents do appoint and depute them, the said Benjamin Franklin, Silas Deane, and Arthur Lee, our Commissioners, giving and granting to them, the said Franklin, Deane, and Lee, or any two of them, and in case of the death, absence, or disability of any two, or any one of them, full power to

\* Foreign Relations. (Secret Journal,) vol. ii. p. 27.

communicate, treat, agree and conclude with his most Christian Majesty, the King of France, or with such person or persons, as shall by him be for that purpose authorized, of and upon a true and sincere friendship, and a firm, inviolable and universal peace for the defence, protection, and safety of the navigation and mutual commerce of the subjects of his most Christian Majesty, and the people of the United States, and to do all other things, which may conduce to those desirable ends, and promising in good faith to ratify whatsoever our said Commissioners shall transact in the premises. Done in Congress, in Philadelphia, the thirtieth day of September, in the year of our Lord one thousand seven hundred and seventy-six."

Mr. Lee and Mr. Deane, in Europe at the time of their appointment, were joined, in December, by Dr. Franklin. The first letter of the Commissioners is dated Jan. 17, 1777.

"To the Committee for Foreign Affairs.

"We joined each other at this place on the 22d of December, and on the 23th had an audience of his Excellency the Count De Vergennes, one of his most Christian Majesty's principal Secretaries of State, and Minister for foreign affairs. We laid before him our Commission, with the articles of the proposed Treaty of Commerce. He assured us of the protection of his Court, and that due consideration should be given to what we offered. Soon after we presented a "mémoire" on the present situation of our States, drawn up at the Minister's request, together with the articles of the general confederation, and the demand for ships of war, agreeable to our instructions. Copies of all these papers were given by us to the Count D'Aranda, his Catholic Majesty's Ambassador here, to be communicated to his court.

"We are promised an answer from this Court as soon as they can know the determination of Spain, with which they mean to act in perfect unanimity. In the mean time, we are endeavouring to expedite several vessels, laden with artillery, arms, ammunition and clothing, which we hope will reach you in time for the campaign, though unfortunately one vessel, which Mr. Deane had sent so laden, has put back, after having been three weeks at sea;—she is, however, now sailed again.

"The ports of France, Spain and Florence (that is, Leghorn in the Mediterranean) are open to the American cruisers upon the usual forms of neutrality."

Dr. Franklin was received at Paris with uncommon attention; known already as a philosopher, the cause he represented was undoubtedly popular with the French. Indeed, the subject of liberty itself was, already, popular. It might have been only a fashion, as so many other things have been in France—it might have arisen from the metaphysical, or rather philosophical discussions, in which the French were then so much engaged, without at all apprehending the practical effects of them. Or, perhaps, we may, with most truth, call the cause of the colonies popular, because it was one likely to do vast mischief to England. The novelty of the undertaking itself, produced an enthusiasm in France; a war was commenced on a new continent;—the scene of action and of interest was transferred from the old world. This had, already, happened in the former French wars, when Quebec and their other possessions fell. But, then, the European had only left his customary battle-grounds to meet on a new continent with the same armies, the same animosity, and the same ambition. Europe was a party to those wars,—to this, a spectator. At any rate, America was viewed with that deep interest and sympathy, with which the weak are regarded in all contests, and those, who were not inspired with the holy spirit of emancipation, doubtless wished well to a cause, that was fought at such fearful odds.

But the government manifested an evident reluctance to form an open alliance at this time; it naturally and prudently sought for delay. "The politics of this court," remarks A. Lee, January 3, '77, "are in a kind of trembling hesitation. It is in consequence of this that the promises, which were made me by the French agent in London (and which I stated to you by Mr. Story and others), have not been entirely fulfilled."\* The Commissioners were not publicly re-

\* The allusion in this letter is thus explained. "Paris, Feb. 8, 1778. I was present at Mr. Lee's chambers at the temple in London, sometime in the spring of '76, when M. Caron de Beaumarchais made offers to Mr. Lee to send supplies of money and stores, through the islands, to the Americans, to the amount of 200,000 livres d'or, and, he said, he was authorized to make the proposals by the Court of France. B. C. D. Lauragais."



ceived; for the fate and condition of the Americans were in an unconfirmed state;—and it might well be doubted, whether they could long resist the mother country, of whose power France herself, bore the deep marks of a recent and melancholy experience. But assistance continued to be secretly furnished;—2,000,000 of livres were put into the hands of Deane and Franklin by a wealthy individual (undoubtedly by the direction of the government), in the summer of '77, without interest or security;—privateers were allowed to equip, and bring their prizes into French ports;—commissions were issued by the American envoys; and the cause of the Revolution still continued exceedingly popular with the people. Franklin, in one of his letters, in May '77, has these remarks:

“All Europe is on our side of the question, as far as applause and good wishes can carry them. Those, who live under arbitrary power, do nevertheless approve of liberty, and wish for it; they almost despair of recovering it in Europe; they read the translations of our separate colony institutions with rapture, and there are such numbers every where, who talk of removing to America with their families and fortunes as soon as peace and our independence shall be established, that it is generally believed, we shall have a prodigious addition of strength, wealth and arts from the emigrations of Europe, and it is thought that to lessen or prevent such emigrations, the tyrannies established there must relax and allow more liberty to their people. Hence it is a common observation here, that our cause is the cause of all mankind, and that we are fighting for their liberty in defending our own.”\*

But he could obtain no recognition of the independence, nor public declaration of assistance from the French court. Franklin, who knew the world, was obliged, for the moment,

\* Extract of a letter from Silas Deane to the Congress. “Dec. 3, '76. The Queen is fond of parade, and I believe, wishes for war, and is our friend. She loves riding on horseback. Could you send me a fine Narraganset horse or two? The money would be well laid out. Rittenhouse's orrery, or Arnold's collection of insects—a phaeton of American make, and a pair of bay horses—a few barrels of apples, walnuts, cranberries, butternuts, &c. would be great curiosities.”



to console himself with the barren but polite phrase of the French Minister, that while he was in Paris, he should have "toute la sureté et tous les agrémens que nous y faisons éprouver aux étrangers." At one time, M. de Vergennes gave the American Commissioners hopes, they should be received as Ministers Plenipotentiary, though he exacted from them, as a preliminary step, that an authentic copy of the Declaration of Independence should be procured, *which they had omitted to bring*. Dr. Franklin had now been at the court more than six months; he was, as he said himself, "treated with great civility and respect by all orders of people, and it afforded him great satisfaction to find that he was of some use to his country." A French writer of that period, speaking of him, says, he was an "old man of a superb appearance, of a simple air and great affability, full of courage and confidence in his fellow-citizens and in the future."\*

In one of the earliest letters of the Commissioners, we have a minute account of the situation of affairs at the court of Versailles.

"PARIS, 12 MARCH 1777.

"To the Secret Committee.

"It is now more than four months, since Mr. Franklin's departure from Philadelphia, and not a line from thence, written since that time, has hitherto reached either of your Commissioners

\* We have met, in La Harpe's Correspondence, with an anecdote, relating to America, that does not appear to have been much circulated. It took place at the time of the celebrated last visit of Voltaire to Paris. It does not belong to the precise year, of which we are now treating, but our apology for extracting it, is its application to the subject. "Nothing appears more worthy of being mentioned than Voltaire's interview with Franklin. M. de Voltaire spoke to him in English; his niece, Mme. Denis, who was present with some other friends, observed, they should be glad to hear what was said, and begged him to speak French. 'I beg your pardon,' replied Voltaire, 'I have for a moment yielded to the vanity of speaking the same language as Dr. Franklin.' Franklin presented his grandson to the philosopher, and craved his blessing for him. Voltaire extended his arms over him, and said to him, 'My child, God and Liberty! Recollect those two words.'"

in Europe. We have had no information of what passes in America, but through England, and the advices are for the most part only as the Ministry choose to publish. Our total ignorance of the truth or falsehood of facts, when questions are asked of us concerning them, makes us appear small in the eyes of the people here, and is prejudicial to our negotiations.

"In ours of 6th February, of which a copy is enclosed, we acquainted you, that we were about purchasing some cutters, to be employed as packet boats. We have succeeded in getting one from Dover, in which we purpose to send our present despatches. Mr. Hodge, who went to Dunkirk and Flushing, where he thought another might be easily found, has not yet acquainted us with his success. We promised, that when we had a conveyance, which by its swiftness is more likely to carry safely our letters, we would be more explicit in accounts of our proceedings here, which promise, we shall now fulfil, as follows.

"In our first conversation with the Minister, after the arrival of Mr. Franklin, it was evident that this Court, while it treated us privately with all civility, was cautious of giving umbrage to England, and was, therefore, desirous of avoiding an open reception and acknowledgment of us, or entering into any formal negotiation with us, as Ministers from the Congress. To make us easy, however, we were told that the ports of France were open to our ships as friends, that our people might freely purchase and transport, as merchandise, whatever our States had occasion for, vending at the same time our own commodities; that in doing this, we should experience all the facilities, that a government, disposed to favour us, could, consistent with treaties, afford to the enemies of a friend. But though it was, at that time, no secret, that two hundred field-pieces of brass, and thirty thousand fusils, with other munitions of war in great abundance, had been taken out of the king's magazines for the purpose of exportation to America, the Minister, in our presence, affected to know nothing of that operation, and claimed no merit to his Court on that account. But he intimated to us, that it would be well taken, if we communicated with no other person about the Court concerning our affairs, but himself, who would be ready, at all convenient times, to confer with us.

"We soon after presented several memorials, representing the state of the colonies,—the necessity of some naval aid,—and the utility to France, that must result from our success in establishing

the independence of America, with the freedom of its commerce. In answer, we received a positive refusal of the ships of the line (which we had been instructed to ask), on this principle, that if a war with England should take place, the whole fleet of France would be necessary at home for her defence; that if such a war did not take place, yet, while England apprehended a war, it was equally serviceable to our States, that the fleet of France should remain entire in her ports, since that must retain an equal force of English at home, who might otherwise go to America, and who certainly would follow thither any French squadron.

"During these conferences, every step was taken to gratify England publicly, by attending to the remonstrances of her ambassador, forbidding the departure of ships, which had military stores on board,—recalling officers, who had leave of absence and were going to join us,—and giving strict orders that our prizes should not be sold in French ports; yet, that we might not be discouraged, it was intimated to us by persons about the Court, that those measures were necessary at present, France not being yet quite ready for a war, and that we might be assured of her good will to us and to our cause—means were proposed of our obtaining a large sum of money for present use by an advance from the Farmers General, to be repaid in tobacco, of which they wanted twenty thousand hogsheads. We entered accordingly into a treaty with that company, which meeting with difficulty in settling the terms, we were informed that a grant was made us of two millions of livres, from the Crown, of which five hundred thousand was ready to be paid us down, and an equal sum should be paid the beginnings of April, July and October, that, such was the King's generosity, he exacted no conditions or promise of repayment; he only required, we should not speak to any one of our having received this aid. We have accordingly observed strictly this injunction, deviating only in this information to you, which we think necessary for your satisfaction, but earnestly requesting that you would not suffer it to be made public. This is the money, which, in our former letter, we mentioned as raised for us by subscription."

In the middle of the summer of '77, affairs took a very unfavourable turn. News of the deplorable campaigns in the Jerseys had just then arrived in France;—the business appeared to be at an end;—the British believed it themselves, and Franklin's friends wrote to him from England,

that neither France nor Spain would afford the Americans any more than a kind of "paralytic" aid :—just sufficient to prolong their existence a few months. The English were, all along, well satisfied that France assisted the Americans, nor were they ignorant of the manner in which privateers and their prizes were treated ; acts that had been the subject of frequent remonstrances from Lord Stormont, the English Minister at Paris. Hitherto either evaded or neglected, they were renewed in a more decided and categorical manner, upon the present very discouraging appearance of American affairs. An immediate rupture was apprehended, for an order was secretly despatched to recall the French fishermen from the banks of Newfoundland. America appeared at this time but a feeble ally ; it was even in some respects difficult in Europe to ascertain, whether the majority of the people were in favour of the Revolution ; for it had always been said, and was for a long time believed, that its partizans were a bold, unprincipled faction, who could have no permanent support either from their numbers or respectability. The situation of the country in the winter of '76 and '77, certainly gave great countenance to this opinion ;—the authority of Congress seemed to be reduced to a shadow—troops deserted by states—officers were discontented, if not disaffected, and neither levies nor supplies could be obtained. Philadelphia was in possession of the English—Congress had been compelled to retire to Baltimore, and General Burgoyne's expedition from Canada had commenced with alarming success. The country was surrounded ;—Howe was at Philadelphia ; Clinton at New-York, and Burgoyne in the North.

Very extraordinary measures were immediately adopted to remove the suspicions of the British minister and to satisfy his complaints. Several American privateers were detained ; and Mr. Hodge,\* an American merchant, concerned

\* Some account will be found of this person in a statement respecting the commercial proceedings of the American Commissioners in France, made to Congress by Arthur Lee. Philad. 1780. Printed by F. Bailey, &c.

in fitting out these vessels, and in sending military stores to America, with the captain of one of them (the *Amphitrite*) in which part of the stores had been sent, was thrown into the Bastille, from which, however, he was shortly released by the intercession of the American Commissioners. Caron Beaumarchais, since known in such a variety of ways to the public, was alarmed for his own safety, and though avowedly employed by the Government, he believed he should be made a victim to pacify the English envoy. He said to Dr. Franklin, on this occasion, "My Government will cut my throat as if I were a sheep." M. de Vergennes, also, addressed a letter to Lord Stormont in July '77, from which the following extracts are made :

"His Christian Majesty, in the faithful observance of the treaties, that exist with his Britannic Majesty, will permit no act in his own dominions that can derogate from them. Properly affected by the complaints you have been instructed to make in relation to the three American privateers, the *Reprisal*, *Lexington*, and *Dolphin*, directed to leave our ports, and notwithstanding the orders of this government, already returned to them, his Majesty, so far from approving this conduct, has commanded that these privateers should be held in sequestration in the ports, where they may now happen to be, till they can furnish satisfactory security that they will return in a straight course to their own country, and will no longer infest the European seas. As to the prizes these privateers or others may have made, orders have been sent that they should not be sold in our ports, and they have been directed to depart as soon as the wind and other circumstances will permit. Care will be taken that no other commerce is allowed to the Americans than the laws of nations and treaties authorize."

The French thus appeared determined to abandon the cause of the Americans ; and the supplies and the countenance of the court were withdrawn. Dr. Franklin, dining about this time in a party of French gentlemen at Paris, one of them observed to him, that his country at that moment presented a sublime spectacle,—“Yes,” said the doctor, “but the spectators do not pay.”\*

\* The Commissioners appear to have had a person in London, who

The French court could never have submitted to this course with the least good will. They were disappointed in not securing the American trade in exchange for an acknowledgment of independence, and in not depriving England of one of the principal sources of her wealth and power; they appeared about to lose a most favourable opportunity of revenging on that country the disgraces and disasters, that preceded the peace of 1763;—of restoring the maritime equilibrium, and of enriching their own commerce by the losses of a great rival. France, without perhaps thinking very profoundly upon the independence of the colonies, or the effects which would result from that act, considered the occasion as one by which she might profit. She had assisted America actively and importantly for two years under the beard of the British Minister, and had given every intimation possible that she intended to arm in favour of the Revolution. On her side, England submitted patiently, and during the greater part of the time, silently, to this indignity, for she had then a heavy war upon her hands. It would be time enough to turn upon France when the colonies were subdued, an event every campaign was expected to bring about; and the results of the last, as they were then known in Europe, led the French minister to apprehend that period to be fast arriving. It is perfectly just to remark, that at the moment when aid and countenance were most important to the Americans, the French *Government* resorted to decisive means to prove the strict neutrality of its conduct.

This was a discouraging juncture for the American Commissioners, though Franklin retained full confidence in the resolution of his countrymen. He was, also, well acquainted with the real dispositions of the French court, and he saw, they had proceeded to such a length that it would be difficult to withdraw with safety. "This Court," write the Commissioners, September 8, 1777, "continues the same conduct it has held since our arrival. It professes to England

sent them information. Among other facts, disclosed in their correspondence, A. Lee sent notice to Congress of the British expedition up the Sound.

an intention to observe all treaties, and proves it by restoring prizes *too openly* brought into their ports, imprisoning such persons as are found concerned in fitting out privateers against England, warning repeatedly those from America to depart, and renewing its orders against the exportation of warlike stores. *To us it privately professes a real friendship, wishes success to our cause, privately affords every essential aid and goes on preparing for war.*"\* The cause was still very popular with the French people, particularly in the maritime towns, at that time in a flourishing condition, principally on account of the West India trade. The little commerce they already were engaged in with the United States, encouraged them to a great degree, and the profit with which these operations had been attended, opened to them a most promising prospect. "When would the government arm in favour of the Americans? We heard but this cry in France. The nation deceived the ministry and itself, by exaggerating the commercial advantages that would result from the independence of the American colonies. The fashion of the day propagated the declaration of the Rights of Man. No title appeared more desirable than that of an inhabitant of Boston."†

In December '77, despatches arrived to the Commissioners, containing an account of the surrender of General Burgoyne, and his army. This news decided the French government. Caron Beaumarchais, in a state of extreme despair and agony, was at Passy, the country seat of Dr. Franklin, a few miles from Paris, when the intelligence was brought. He was so overcome by it that he immediately set off for the capital, and in his haste his carriage was upset and his arm dislocated. On the 6th of December '77, M. Gerard, on the part of the French government, gave formal notice to the American Commissioners, that, after a long and mature deliberation upon their propositions, his Christian Majesty had resolved to recognise the independence of, and

\* Vergennes, before the treaty was signed, addressed his American letters to M. Grand, an individual engaged in a banking house in Paris.

† Lacretelle, vol. v.



to enter into treaties of commerce and alliance with, the "United States of America;" and, on the 28th of the month, they were admitted to a formal conference with M. de Vergennes at Paris. These two treaties were signed on the 6th of February 1778,\* by Benjamin Franklin, Silas Deane, and Arthur Lee for America, and Conrad Alexander Gerard for France. We possess no details of the negotiation; but we shall recite in this place a letter, to Congress, of two of the Commissioners, dated February 8, 1778, at Passy.

"We have now the great satisfaction of acquainting you and the Congress, that the treaties with France are, at length, completed and signed. The first is a treaty of Amity and Commerce, much on the plan of that projected in Congress; the other, a treaty of Alliance, in which it is stipulated that, in case England declares war against France, or occasions a war by attempts to hinder her commerce with us, we should then make common cause, and join our forces and councils, &c. &c. The great aim of this treaty is declared to be, "to establish the liberty, sovereignty and independency, absolute and unlimited, of the United States, as well in matters of government as commerce,"—and this is guaranteed to us by France, together with all the countries we possess, or shall possess, at the conclusion of the war. In return for which the States guaranty to France all its possessions in America. We do not now add more particulars, as you will soon have the whole by a safer conveyance, a frigate being appointed to carry our despatches. We only observe to you, and with pleasure, that we have found, throughout this business, the greatest cordiality in this Court, and that no advantage has been taken, or attempted to be taken, of our present difficulties, to obtain hard terms from us; but such has been the King's magnanimity and goodness, that he has proposed none, which we might not readily have agreed to in a state of full

\* This proceeding was soon known in England. Gibbon writes (London, Feb. 23, 1778) to Mr. Holroyd, afterwards Lord Sheffield, "It is positively asserted, both in private and in Parliament, and not contradicted by Ministers, that on the *fifth of this month a treaty of commerce* (which naturally leads to war) *was signed at Paris with the independent States of America*. Yet there still remains a hope, that England may obtain the preference. The two greatest countries in Europe are fairly running a race for the favour of America."



prosperity and established power. The principle laid down as the basis of the treaty being, as declared in the preamble, "the most perfect equality and reciprocity"—the privileges in trade, &c. are mutual, and none are given to France, but what we are at liberty to grant to any other nation. On the whole, we have abundant reason to be satisfied with the good will of this Court and the nation in general, which we, therefore, hope will be cultivated by the Congress by every means that may establish the union, and make it permanent. Spain being slow, there is a separate and secret clause by which she is to be received into the alliance upon requisition; and there is no doubt of the event. When we mention the good will of this nation to our cause, we may add that of all Europe, which, having been offended by the pride and insolence of Britain, wishes to see its power diminish; and all, who have received injuries from her, are, by one of the articles, to be invited into an alliance. The preparations for war are carried on with immense activity,—and it is very soon expected."

These were the first treaties made by the United States, and as it respects the commercial one, the model of most conventions, since concluded with the states on the continent of Europe. We abstain from making any general remarks on their stipulations, as the whole are extracted. But in the commercial treaty, though no reciprocity of duties was established, the barbarous *droit d'aubaine* was abolished as it regarded Americans,—contrabands, specifically enumerated, were confined to munitions of war; a trade with an enemy's possessions was admitted, and the great neutral principle, "Free ships, free goods," was recognised. The commerce of each party was put on the footing of the most favoured nations; *gentis amicissimae*. Other remarks on this treaty will be found in the next chapter. The treaty of alliance, besides containing a guaranty of possession to a certain extent, declared that arms should not be laid down till the independence of America was secured.\* Thus did France

#### \* TREATY OF AMITY AND COMMERCE.

"The most Christian King, and the thirteen United States of North America, to wit: New-Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Ma-

acquire the signal honour of having been the first power in the old world to recognise the independence of a youthful nation in the new.\*

ryland, Virginia, North Carolina, South Carolina, and Georgia, willing to fix in an equitable and permanent manner, the rules which ought to be followed relative to the correspondence and commerce which the two parties desire to establish, between their respective countries, states, and subjects, his most christian majesty and the said United States, have judged that the said end could not be better obtained than by taking, for the basis of their agreement, the most perfect equality and reciprocity, and by carefully avoiding all those burthensome preferences, which are usually sources of debate, embarrassment and discontent; by leaving also each party at liberty to make, respecting commerce and navigation, those interior regulations which it shall find most convenient to itself; and by founding the advantage of commerce solely upon reciprocal utility, and the just rules of free intercourse; reserving withal to each party the liberty of admitting at its pleasure, other nations to a participation of the same advantages. It is in the spirit of this intention, and to fulfil these views, that his said Majesty, having named and appointed for his plenipotentiary, Conrad Alexander Gerard, royal *syndic* of the city of Strasbourg, Secretary of his Majesty's council of state; and the United States on their part, having fully empowered Benjamin Franklin, deputy from the State of Pennsylvania to the General Congress, and president of the convention of said State; Silas Deane, late deputy from the State of Connecticut to the said Congress, and Arthur Lee, counsellor at law; the said respective plenipotentiaries, after exchanging their powers, and after mature deliberation, have concluded and agreed upon the following articles:

"ART. 1. There shall be a firm, inviolable and universal peace, and a true and sincere friendship between the most Christian King, his

\* We extract from a French writer of eminence, a brief account of M. de Vergennes:—"M. de Vergennes died with calmness at the age of sixty-eight, in February '87. This minister did not pride himself on making a great figure in politics. He possessed good sense, wisdom and moderation, particularly what is called a *good method*, the fruit of fifty years' experience. To temporize was the principal resource of this minister. He showed a want of address in seizing the opportunity of the American Revolution to humiliate England. The American war exhausted the finances of the kingdom, and disturbed the ancient system of subordination."

The treaty was not ratified precisely as concluded, the original 11th and 12th articles being stricken out. The 11th article conceded to the United States a perpetual pri-

heirs and successors, and the United States of America; and the subjects of the most Christian King, and of the said States; and between the countries, islands, cities and towns, situate under the jurisdiction of the most Christian King, and of the said United States, and the people and inhabitants of every degree, without exception of persons or places; and the terms hereinafter mentioned shall be perpetual between the most Christian King, his heirs and successors, and the said United States.

"ART. 2. The most Christian King, and the United States engage mutually not to grant any particular favour to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favour, freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional.

"ART. 3. The subjects of the most Christian King shall pay in the ports, havens, roads, countries, islands, cities or towns, of the United States, or any of them, no other or greater duties, or imposts, of what nature soever they be, or by what name soever called, than those which the nations most favoured are, or shall be obliged to pay; and they shall enjoy all the rights, liberties, privileges, immunities and exemptions in trade, navigation and commerce, whether in passing from one port in the said states to another, or in going to and from the same, from and to any part of the world, which the said nations do or shall enjoy.

"ART. 4. The subjects, people and inhabitants of the said United States, and each of them, shall not pay in the ports, havens, roads, isles, cities and places under the domination of his most Christian Majesty, in Europe, any other or greater duties or imposts, of what nature soever they may be, or by what name soever called, than those which the most favoured nations are or shall be obliged to pay; and they shall enjoy all the rights, liberties, privileges, immunities and exemptions in trade, navigation and commerce, whether in passing from one port in the said dominions, in Europe, to another, or in going to and from the same, from and to any part of the world, which the said nations do or shall enjoy.

"ART. 5. In the above exemption is particularly comprised the imposition of one hundred sols per ton, established in France on foreign ships; unless when the ships of the United States shall load with the merchandise of France for another port of the same dominion, in

vilage of importing, from the French West India possessions, molasses without being subject to any sort of duty on exportation, but, as a compensation for this exemption, it was

which case the said ships shall pay the duty above mentioned so long as other nations, the most favoured, shall be obliged to pay it. But it is understood that the said United States or any of them, are at liberty, when they shall judge it proper, to establish a duty equivalent in the same case.

"ART. 6. The most Christian King shall endeavour, by all the means in his power, to protect and defend all vessels and the effects belonging to the subjects, people, or inhabitants of the said United States, or any of them, being in his ports, havens, or roads, or on the seas near to his countries, islands, cities, or towns, and to recover and restore to the right owners, their agents, or attorneys, all such vessels and effects, which shall be taken within his jurisdiction; and the ships of war of his most Christian Majesty, or any convoy sailing under his authority, shall, upon all occasions, take under their protection all vessels belonging to the subjects, people or inhabitants of the said United States, or any of them, and holding the same course, or going the same way, and shall defend such vessels as long as they hold the same course, or go the same way, against all attacks, force and violence, in the same manner as they ought to protect and defend the vessels belonging to the subjects of the most Christian King.

"ART. 7. In like manner, the said United States, and their ships of war, sailing under their authority, shall protect and defend, conformable to the tenor of the preceding article, all the vessels and effects belonging to the subjects of the most Christian King, and use all their endeavours to recover, and cause to be restored, the said vessels and effects that shall have been taken within the jurisdiction of the said United States, or any of them.

"ART. 8. The most Christian King will employ his good offices and interposition with the king or emperor of Morocco or Fez, the regencies of Algier, Tunis and Tripoli, or with any of them; and also with every other prince, state or power, of the coast of Barbary, in Africa, and the subjects of the said king, emperor, states and powers, and each of them, in order to provide as fully and efficaciously as possible for the benefit, conveniency and safety of the said United States, and each of them, their subjects, people and inhabitants, and their vessels and effects, against all violence, insult, attacks or depredations, on the part of the said princes and states of Barbary, or their subjects.

"ART. 9. The subjects, inhabitants, merchants, commanders of ships, masters and mariners, of the states, provinces and dominions of

agreed, that no duties should ever be imposed on the exportation of any kind of merchandise, which the French may take from the present or future possessions of the United

each party respectively, shall abstain and forbear to fish in all places possessed, or which shall be possessed, by the other party; the most Christian King's subjects shall not fish in the havens, bays, creeks, roads, coasts or places, which the said United States hold, or shall hereafter hold, and in like manner, the subjects, people and inhabitants of the said United States, shall not fish in the havens, bays, creeks, roads, coasts or places, which the most Christian King possesses, or shall hereafter possess; and if any ship or vessel shall be found fishing contrary to the tenor of this treaty, the said ship or vessel, with its lading, proof being made thereof, shall be confiscated; it is however understood that the exclusion stipulated in the present article, shall take place only so long and so far as the most Christian King, or the United States, shall not in this respect have granted an exemption to some other nation.

"ART. 10. The United States, their citizens and inhabitants, shall never disturb the subjects of the most Christian King in the enjoyment and exercise of the right of fishing on the banks of Newfoundland, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island which is designed by the treaty of Utrecht, nor in the rights relative to all and each of the isles which belong to his most Christian Majesty, the whole conformable to the true sense of the treaties of Utrecht and Paris.

"ART. 11. The subjects and inhabitants of the said United States, or any one of them, shall not be reputed aubains in France, and consequently shall be exempted from the *droit d'aubaine*, or other similar duty, under what name soever. They may, by testament, donation or otherwise, dispose of their goods, moveable and immovable, in favour of such persons as to them shall seem good, and their heirs, subjects of the said United States, residing whether in France or elsewhere, may succeed them *ab intestat*, without being obliged to obtain letters of naturalization, and without having the effect of this concession contested or impeded under pretext of any rights or prerogatives of provinces, cities or private persons; and the said heirs, whether such by particular title, or *ab intestat*, shall be exempt from all duty called *droit de detraction*, or other duty of the same kind, saving nevertheless the local rights or duties as much, and as long as similar ones are not established by the United States, or any of them. The subjects of the most Christian King shall enjoy on their part in all the

States for the use of the islands, that furnished molasses. In 1778, molasses was an article, much more important than at present, for consumption, but particularly for distillation, and

dominions of the said states, an entire and perfect reciprocity relative to the stipulations contained in the present article, but it is at the same time agreed that its contents shall not affect the laws made, or that may be made hereafter in France against emigrations, which shall remain in all their force and vigour, and the United States on their part, or any of them, shall be at liberty to enact such laws, relative to that matter, as to them shall seem proper.

"ART. 12. The merchant ships of either of the parties which shall be making into a port belonging to the enemy of the other ally, and concerning whose voyage, and the species of goods on board her, there shall be just grounds of suspicion, shall be obliged to exhibit, as well upon the high seas, as in the ports and havens, not only her passports, but likewise certificates, expressly showing that her goods are not of the number of those which have been prohibited as contraband.

"ART. 13. If by the exhibiting of the abovesaid certificates, the other party discover there are any of those sorts of goods which are prohibited and declared contraband, and consigned for a port under the obedience of his enemies, it shall not be lawful to break up the hatches of such ship, or to open any chest, coffers, packs, casks or any other vessels found therein, or to remove the smallest parcels of her goods, whether such ship belongs to the subjects of France, or the inhabitants of the said United States, unless the lading be brought on shore in the presence of the officers of the court of admiralty, and an inventory thereof made; but there shall be no allowance to sell, exchange or alienate the same, in any manner, until after that due and lawful process shall have been had against such prohibited goods, and the court of admiralty shall, by a sentence pronounced, have confiscated the same: saving always as well the ship itself as any other goods found therein, which by this treaty are to be esteemed free, neither may they be detained on pretence of their being as it were infected by the prohibited goods, much less shall they be confiscated, as lawful prize: but if not the whole cargo, but only part thereof shall consist of prohibited or contraband goods, and the commander of the ship shall be ready and willing to deliver them to the captor, who has discovered them, in such case, the captor having received those goods, shall forthwith discharge the ship, and not hinder her by any means, freely to prosecute the voyage on which she was bound. But in case the contraband merchandises cannot be all received on board the ves-

was one of the principal sources of trade of the commercial part of the nation. The remarkable changes in trade, in consumption, the introduction of sugar and the use of other

sel of the captor, then the captor may, notwithstanding the offer of delivering him the contraband goods, carry the vessel into the nearest port, agreeable to what is above directed.

"ART. 14. On the contrary, it is agreed, that whatever shall be found to be laden by the subjects and inhabitants of either party on any ship belonging to the enemies of the other, or to their subjects, the whole, although it be not of the sort of prohibited goods, may be confiscated in the same manner as if it belonged to the enemy, except such goods and merchandises as were put on board such ship before the declaration of war, or even after such declaration, if so be, it were done without knowledge of such declaration, so that the goods of the subjects and people of either party, whether they be of the nature of such as are prohibited or otherwise, which as is aforesaid, were put on board any ship belonging to an enemy before the war or after the declaration of the same, without the knowledge of it, shall no ways be liable to confiscation, but shall well and truly be restored without delay to the proprietors demanding the same; but so as that if the said merchandises be contraband, it shall not be any ways lawful to carry them afterwards to any ports belonging to the enemy. The two contracting parties agree, that the term of two months being passed after the declaration of war, their respective subjects, from whatever part of the world they come, shall not plead the ignorance mentioned in this article.

"ART. 15. And that more effectual care may be taken for the security of the subjects and inhabitants of both parties, that they suffer no injury by the men of war or privateers of the other party, all the commanders of the ships of his most Christian Majesty, and of the said United States, and all their subjects and inhabitants, shall be forbid doing any injury or damage to the other side; and if they act to the contrary, they shall be punished, and shall moreover be bound to make satisfaction for all matter of damage, and the interest thereof, by reparation, under the pain and obligation of their person and goods.

"ART. 16. All ships and merchandises of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.



articles for distilleries, were not then anticipated ; and, as it was naturally supposed that Great Britain, on a return of peace, might subject an intercourse with her West India pos-

“ ART. 17. It shall be lawful for the ships of war of either party, and privateers, freely to carry whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any duty to the officers of the admiralty or any other judges ; nor shall such prizes be arrested or seized when they come to or enter the ports of either party ; nor shall the searchers or other officers of those places search the same, or make examination concerning the lawfulness of such prizes ; but they may hoist sail at any time, and depart and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to show : on the contrary, no shelter or refuge shall be given in their ports to such as shall have made prize of the subjects, people or property of either of the parties ; but if such shall come in, being forced by stress of weather, or the danger of the sea, all proper means shall be vigorously used, that they go out and retire from thence as soon as possible.

“ ART. 18. If any ship belonging to either of the parties, their people or subjects, shall, within the coasts or dominions of the other, stick upon the sands, or be wrecked, or suffer any other damage, all friendly assistance and relief shall be given to the persons shipwrecked, or such as shall be in danger thereof. And letters of safe conduct shall likewise be given to them for their free and quiet passage from thence, and the return of every one to his own country.

“ ART. 19. In case the subjects and inhabitants of either party, with their shipping, whether public and of war, or private and of merchants, be forced through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbour, to retreat and enter into any of the rivers, bays, roads or ports belonging to the other party, they shall be received and treated with all humanity and kindness, and enjoy all friendly protection and help ; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals and all things needful for the sustenance of their persons, or reparation of their ships, and conveniency of their voyage ; and they shall no ways be detained or hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.

“ ART. 20. For the better promoting of commerce on both sides, it is agreed, that if a war shall break out between the said two nations, six months after the proclamation of war shall be allowed to the mer-

sessions to some disabilities, a perpetual supply of molasses was secured under this stipulation from the French islands. But it was an indiscreet, hasty and unequal provision. The

chants in the cities and towns where they live, for selling and transporting their goods and merchandises ; and if any thing be taken from them, or any injury be done them within that term, by either party, or the people, or subjects of either, full satisfaction shall be made for the same.

"ART. 21. No subjects of the most Christian King shall apply for or take any commission, or letters of marque, for arming any ship or ships to act as privateers against the said United States, or any of them, or against the subjects, people, or inhabitants of the said United States, or any of them, or against the property of any of the inhabitants of any of them, from any prince or state with which the said United States shall be at war ; nor shall any citizen, subject, or inhabitant of the said United States, or any of them, apply for or take any commission or letters of marque for arming any ship or ships, to act as privateers against the subjects of the most Christian King, or any of them, or the property of any of them, from any prince or state with which the said king shall be at war ; and if any person of either nation shall take such commissions or letters of marque, he shall be punished as a pirate.

"ART. 22. It shall not be lawful for any foreign privateers, not belonging to subjects of the most Christian King, nor citizens of the said United States, who have commissions from any other prince or state in enmity with either nation, to fit their ships in the ports of either the one or the other of the aforesaid parties, to sell what they have taken, or in any other manner whatsoever to exchange their ships, merchandises, or any other lading ; neither shall they be allowed even to purchase victuals, except such as shall be necessary for their going to the next port of that prince or state from which they have commissions.

"ART. 23. It shall be lawful for all and singular the subjects of the most Christian King, and the citizens, people and inhabitants of the said United States, to sail with their ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandises laden thereon, from any port to the places of those who now are or hereafter shall be at enmity with the most Christian King, or the United States. It shall likewise be lawful for the subjects and inhabitants aforesaid, to sail with the ships and merchandises aforementioned, and to trade with the same liberty and security from the places, ports and havens of those who are enemies of both or either

Americans might have had the carrying of the molasses, a single article of export from the islands, upon which no duties could be imposed, but France, by a slight discriminating

party, without any opposition or disturbance whatsoever, not only directly from the places of the enemy aforementioned to neutral places, but also from one place belonging to an enemy, to another place belonging to an enemy, whether they be under the jurisdiction of the same prince, or under several. And it is hereby stipulated, that free ships shall also give a freedom to goods, and that every thing shall be deemed to be free and exempt which shall be found on board the ships belonging to the subjects of either of the confederates, although the whole lading, or any other part thereof should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemies.

"ART. 24. This liberty of navigation and commerce shall extend to all kinds of merchandises, excepting those only which are distinguished by the name of contraband, and under this name of contraband, or prohibited goods, shall be comprehended arms, great guns, bombs with the fusees, and other things belonging to them, cannon-ball, gunpowder, match, pikes, swords, lances, spears, halberds, mortars, petards, granades, saltpetre, muskets, musket-ball, bucklers, helmets, breast plates, coats of mail, and the like kinds of arms, proper for arming soldiers, musket-rests, belts, horses with their furniture, and all other warlike instruments whatever. These merchandises which follow, shall not be reckoned among contraband or prohibited goods; that is to say, all sorts of cloths, and all other manufactures, woven of any wool, flax, silk, cotton, or any other materials whatever, all kinds of wearing apparel, together with the species whereof they are used to be made, gold and silver, as well coined as uncoined, tin, iron, latten, copper, brass, coals; as also wheat and barley, and any other kind of corn and pulse; tobacco, and likewise all manner of spices; salted and smoked flesh, salted fish, cheese and butter, beer, oils, wines, sugars, and all sorts of salts; and in general all provisions which serve for the nourishment of mankind and the sustenance of life; furthermore, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail cloths, anchors, and any parts of anchors, also ships' masts, planks, boards and beams of what trees soever; and all other things proper either for building or repairing ships, and all other

duty in favour of her own vessels, could have secured the whole trade from the United States to the islands. The provision, it will be observed, applied only to the cargoes.

goods whatever which have not been worked into the form of any instrument or thing prepared for war by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use: all which shall be wholly reckoned among free goods; as likewise all other merchandises and things which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods; so that they may be transported and carried in the freest manner by the subjects of both confederates, even to places belonging to an enemy, such towns or places being only excepted, as are at that time besieged, blocked up or invested.

"ART. 25. To the end that all manner of dissensions and quarrels may be avoided and prevented, on one side and the other, it is agreed, that in case either of the parties hereto should be engaged in war, the ships and vessels belonging to the subjects or people of the other ally, must be furnished with sea letters or passports, expressing the name, property, and bulk of the ship, as also the name and place of habitation of the master or commander of the said ship, that it may appear thereby that the ship really and truly belongs to the subjects of one of the parties, which passport shall be made out and granted according to the form annexed to this treaty; they shall likewise be recalled every year, that is, if the ship happens to return home within the space of a year. It is likewise agreed, that such ships being laden are to be provided not only with passports as abovementioned, but also with certificates, containing the several particulars of the cargo, the place whence the ship sailed, and whither she is bound, that so it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship set sail, in the accustomed form; and if any one shall think it fit or advisable to express in the said certificates, the person to whom the goods on board belong, he may freely do so.

"ART. 26. The ships of the subjects and inhabitants of either of the parties, coming upon any coasts belonging to either of the said allies, but not willing to enter into port, or being entered into port, and not willing to unload their cargoes or break bulk, they shall be treated according to the general rules prescribed or to be prescribed, relative to the object in question.

"ART. 27. If the ships of the said subjects, people, or inhabitants of

This article was the only departure of any importance from the instructions of the Commissioners, and it was probably effected by the influence of Dr. Franklin, doubtless aided

either of the parties shall be met with, either sailing along the coasts or on the high seas, by any ship of war of the other, or by any privateers, the said ships of war or privateers, for the avoiding of any disorder, shall remain out of cannon shot, and may send their boats aboard the merchant ship which they shall so meet with, and may enter her to the number of two or three men only, to whom the master or commander of such ship or vessel shall exhibit his passport concerning the property of the ship, made out according to the form inserted in this present treaty, and the ship, when she shall have showed such passport, shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or search her in any manner, or to give her chase, or force her to quit her intended course.

"ART. 28. It is also agreed, that all goods when once put on board the ships or vessels of either of the two contracting parties, shall be subject to no further visitation; but all visitation or search shall be made beforehand, and all prohibited goods shall be stopped on the spot, before the same be put on board, unless there are manifest tokens or proofs of fraudulent practice; nor shall either the persons or goods of the subjects of his most Christian Majesty or the United States, be put under any arrest or molested by any other kind of embargo for that cause; and only the subject of that state to whom the said goods have been or shall be prohibited, and who shall presume to sell or alienate such sort of goods, shall be duly punished for the offence.

"ART. 29. The two contracting parties grant mutually the liberty of having each in the ports of the other, consuls, vice consuls, agents, and commissaries; whose functions shall be regulated by a particular agreement.

"ART. 30. And the more to favour and facilitate the commerce which the subjects of the United States may have with France, the most Christian King will grant them in Europe one or more free ports, where they may bring and dispose of all the produce and merchandise of the thirteen United States; and his Majesty will also continue to the subjects of the said states, the free ports which have been and are open in the French islands of America: of all which free ports the said subjects of the United States shall enjoy the use, agreeable to the regulations which relate to them.

"ART. 31. The present treaty shall be ratified on both sides, and the

in the business by Mr. Deane. The other Commissioner, Mr. Lee, being opposed to it, (together with Mr. Izard, Commissioner for the Italian States, in Paris at the time the trea-

-atifications shall be exchanged in the space of six months, or sooner if possible.

"In faith whereof the respective plenipotentiaries have signed the above articles, both in the French and English languages, declaring nevertheless, that the present treaty was originally composed and concluded in the French language, and they have thereto affixed their seals.

"Done at Paris, this sixth day of February, one thousand seven hundred and seventy-eight.

"C. A. GERARD, [L. S.]

"B. FRANKLIN, [L. S.]

"SILAS DEANE, [L. S.]

"ARTHUR LEE. [L. S.]"

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#### TREATY OF ALLIANCE.

"The most Christian King and the United States of North America, to wit: New-Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, having this day concluded a treaty of amity and commerce, for the reciprocal advantage of their subjects and citizens, have thought it necessary to take into consideration the means of strengthening those engagements, and of rendering them useful to the safety and tranquillity of the two parties; particularly in case Great Britain in resentment of that connexion and of the good correspondence which is the object of the said treaty, should break the peace with France, either by direct hostilities, or by hindering her commerce and navigation in a manner contrary to the rights of nations, and the peace subsisting between the two crowns: and his Majesty and the said United States, having resolved in that case to join their councils and efforts against the enterprises of their common enemy, the respective plenipotentiaries empowered to concert the clauses and conditions proper to fulfil the said intentions, have, after the most mature deliberation, concluded and determined on the following articles:

ty was concluded,) presented strong representations on the subject to Congress. It led to many angry remarks between the parties, and was one of the causes of the unhappy con-

"ART. 1. If war should break out between France and Great Britain during the continuance of the present war between the United States and England, his Majesty and the said United States shall make it a common cause, and aid each other mutually with their good offices, their counsels and their forces, according to the exigence of conjunctures, as becomes good and faithful allies.

"ART. 2. The essential and direct end of the present defensive alliance is to maintain effectually the liberty, sovereignty, and independence absolute and unlimited, of the said United States, as well in matters of government as of commerce.

"ART. 3. The two contracting parties shall each on its own part, and in the manner it may judge most proper, make all the efforts in its power against their common enemy, in order to attain the end proposed.

"ART. 4. The contracting parties agree, that in case either of them should form any particular enterprise in which the concurrence of the other may be desired, the party whose concurrence is desired, shall readily and with good faith, join to act in concert for that purpose, as far as circumstances and its own particular situation will permit; and in that case, they shall regulate, by a particular convention, the quantity and kind of succour to be furnished, and the time and manner of its being brought into action, as well as the advantages which are to be its compensation.

"ART. 5. If the United States should think fit to attempt the reduction of the British power, remaining in the northern parts of America, or the islands of Bermudas, those countries or islands, in case of success, shall be confederated with, or dependant upon the said United States.

"ART. 6. The most Christian King renounces forever the possession of the islands of Bermudas, as well as of any part of the continent of North America, which, before the treaty of Paris in 1763, or in virtue of that treaty, were acknowledged to belong to the crown of Great Britain, or to the United States, heretofore called British colonies, or which were at this time, or have lately been under the power of the king and crown of Great Britain.

"ART. 7. If his most Christian Majesty shall think proper to attack any of the islands situated in the Gulf of Mexico, or near that gulf, which are at present under the power of Great Britain, all the said isles, in case of success, shall appertain to the crown of France.



troversy, that afterwards took place, and which, in the end, made it necessary for Congress to interpose its authority. "I have the satisfaction," says Mr. Izard in a letter to Mr.

"ART. 8. Neither of the two parties shall conclude either truce or peace with Great Britain, without the formal consent of the other first obtained; and they mutually engage not to lay down their arms until the independence of the United States shall have been formally or tacitly assured, by the treaty or treaties that shall terminate the war.

"ART. 9. The contracting parties declare, that being resolved to fulfil each on its own part, the clauses and conditions of the present treaty of alliance, according to its own power and circumstances, there shall be no after claim of compensation on one side or the other, whatever may be the event of the war.

"ART. 10. The most Christian King and the United States agree to invite or admit other powers who may have received injuries from England, to make common cause with them, and to accede to the present alliance, under such conditions as shall be freely agreed to, and settled between all the parties.

"ART. 11. The two parties guaranty mutually from the present time, and forever, against all other powers, to wit: The United States to his Christian Majesty, the present possessions of the crown of France in America, as well as those which it may acquire by the future treaty of peace: And his most Christian Majesty guaranties on his part to the United States, their liberty, sovereignty and independence, absolute and unlimited, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their confederation may obtain during the war, from any of the dominions now, or heretofore possessed by Great Britain in North America, conformable to the fifth and sixth articles above written, the whole as their possession shall be fixed and assured to the said states, at the moment of the cessation of their present war with England.

"ART. 12. In order to fix more precisely the sense and application of the preceding article, the contracting parties declare, that in case of a rupture between France and England, the reciprocal guaranty declared in the said article, shall have its full force and effect the moment such war shall break out; and if such rupture shall not take place, the mutual obligations of the said guaranty shall not commence until the moment of the cessation of the present war between the United States and England shall have ascertained their possessions.

"ART. 13. The present treaty shall be ratified on both sides, and

Laurens, Sept. 1778, "of finding that Mr. Adams as well as his countrymen, Dr. Franklin and Mr. Deane, have been mistaken in their expectation that Congress would be inattentive to the interests of nine States, to gratify the eaters and distillers of molasses." The French government, with the same good humour and complaisance it had manifested throughout the whole business of the treaty, accepted readily the modification.

The treaty of alliance will, probably, long remain in our code as the only instrument possessing those peculiar and dangerous provisions. It is termed in the body of the writing a defensive one, but war did not exist, at the date of signature, between France and England, though the stipulations of the treaty were likely, with very little delay, to confer upon it the character of an active, offensive alliance. The professed object of the compact was to maintain the independence of this country, but arrangements were made for an ample division of the spoil on the part of France. Every portion of the continent (not acknowledged before the peace of 1763 to belong to Great Britain) and the West India islands, were to be transferred to the latter country in case of a successful termination of the conflict. This distribution left the Bermudas and the anglo-American possessions of the crown in the hands of the United States. We derive from a consideration of this fact, a full explanation of the reasons that induced the French negotiators to consent to this apparently unequal instrument, still further encumbered, as it appeared, by the stipulation (11 art.) of a mutual guaranty. All the commercial advantages France could expect, were secured in the first treaty concluded, that of amity and com-

the ratifications shall be exchanged in the space of six months, or sooner if possible.

"Done at Paris, this sixth day of February, one thousand seven hundred and seventy-eight.

"C. A. GERARD, [L. S.]

"B. FRANKLIN, [L. S.]

"SILAS DEANE, [L. S.]

"ARTHUR LEE. [L. S.]"

merce ;—the territorial ones were provided for in that of alliance. And, while the people of that kingdom were closely engaged with questions of reform and retrenchment in the domestic concerns of the state, their ministers privately meditated and carefully matured the ambitious and dazzling project of reannexing to the French crown, by the aid of the Americans, its ancient fiefs on this continent, and extinguishing, at the same blow, every remaining title of British sovereignty in the West India archipelago. Never was a plan better laid, or a moment more auspicious. But the peace of 1783 gave France neither colonies nor islands nor commerce ; and the great Minister, who adjusted the parts of this bold scheme, was relieved by an early death, not only from the mortifying spectacle of its total and extraordinary failure, but of the bloody dissolution of the whole fabric of that government, with which this treaty of alliance had been concluded.

Writers on French diplomacy considered the mode, in which this war was declared, a political error ; they rejected a direct alliance with the United States, and recommended that France should have proceeded to hostilities on the ground of its own particular wrongs, more especially the insults offered by the English to French vessels, and oppressive maritime jurisdiction, unjustly exercised by that power on the French coasts. It is obvious, this distinction exists only in form. If France took the opportunity to attack England, while she was engaged in suppressing an insurrection in her colonies, the real effect would be in the eyes of the world, that France was disposed to assist those colonies,—it mattered very little, whether she formally recognised their independence, when she made herself a party to the very war that led to its establishment. It would be more correct to remark, that the first operations of the French, though skilfully planned, were executed in an awkward way ; the fleet commanded by M. d'Estaing arrived too late on the coast ; the English had time to escape from the Delaware, and, though altogether inferior, they made such demonstrations off Sandy Hook as effectually deterred the French ad-

miral. It has, also, been said by a French writer, that M. de Choiseul prepared, during his administration, the American Revolution; that he foresaw the mischief a separation would do England, and even at that time laid the foundation of it. A variety of circumstances present abundant proof, that this remark is altogether incorrect. It would have been nearer the truth to have said that during his administration, the spirit was created (and waited but for the administration of M. Turgot to be matured,) which fitted the French nation to enter with such a sincere and deep sensibility into the American Revolution. The government, at that early period, to repeat the word of an author already quoted, was itself "dissertateur;" to the magnificence or licentiousness of the preceding reigns, had succeeded a philosophical spirit of inquiry; and as early as 1775, the nation was entirely occupied with discussions on the unlimited freedom of commerce, the suppression of monasteries, "corvées" and taxes on consumption; the liberty of conscience, and of the press; the recall of the Protestants; the abolition of torture; a civil code; and a new system of public instruction. Those, who will be at the pains of reading the Memoirs and Correspondence of the eminent persons, who figured in those times, now before the public in a voluminous form, will obtain in a pleasing way, a lively idea of the manner in which the educated classes of the French nation were occupied, during the memorable years that preceded the American Revolution.

The treaty was kept secret till the month of March, in order that the French government might have time to recall its fishermen; withdraw its commerce; give notice to its colonies; and put its navy in a proper condition to proceed to sea. In April, the Count d'Estaing sailed with a large squadron from Toulon for the American coast. Either the preparations for war were so openly made, that each party was only waiting for the first direct aggression, or the French government feared the effects, the British Commissioners, appointed under Lord North's conciliatory bills, then about to embark for America, would produce in that country. At

any rate, the French Minister at St. James', the Marquis de Noailles, was directed to notify to that court the signature of the treaties, though the ratifications had not been exchanged. This notification will be found in Flassan.

Franklin and his colleagues soon after went to court in a public manner.

" They were presented by Count de Vergennes to the King, who received them graciously ; they were afterwards presented to the Queen, to Monsieur, then Count de Provence, and to all the members of the royal family, then at Versailles. They were afterwards introduced to the Count de Maurepas, first minister, &c., and these introductions being over, Dr. Franklin and his colleagues, with Dr. Bancroft and the editor of these memoirs, dined with the Count of Vergennes, and in the evening went by particular invitation to 'Jeu de la Reine,' where they found the royal family seated at play round a large table ; a considerable heap of louis d'ors lay before each of the players, and from the number of these, which, from time to time, were *shovelled* by the losers to the winners, the gaming appeared to be high. On this occasion, Dr. Franklin was honoured by the particular notice of the Queen, who courteously desired him to stand near to her, and as often as the game did not require her immediate attention, she took occasion to speak to him in very obliging terms. Dr. Franklin was presented to the King in the gallery of Versailles, by the Count de Vergennes, Minister for Foreign Affairs. His age, his venerable appearance, the simplicity of his dress on such an occasion ; every thing that was either singular or respectable in the life of this American, contributed to augment the public attention. Clapping of hands, and a variety of other demonstrations of joy, announced that warmth of affection, of which the French are more susceptible than any other people, and of which their politeness and civility augments the charm to him, who is the object of it.

" His Majesty addressed him as follows :

" ' You may assure the United States of America of my friendship. I beg leave also to observe that I am exceedingly satisfied in particular with your own conduct during your residence in my kingdom.' When the new ambassador after this audience, crossed the court in order to repair to the office of the minister of Foreign

Affairs, the multitude waited for him in the passage, and hailed him with their acclamations."\*

M. Gerard was appointed by his Christian Majesty Minister Plenipotentiary to the United States in the beginning of the year '78. He sailed in April, on board the *Languedoc*, Count d'Estaing's flag-ship, together with Mr. Silas Deane, who had received letters of recall. M. Gerard embarked secretly. He arrived safely in America, and on the 14th of July, a committee of Congress was appointed to arrange the time and manner of receiving the Minister. The very uncommon circumstance of the occasion must be our apology for extracting at length an account of the ceremonial of reception, and of the address made by the President.

"In pursuance of the ceremonial established by Congress, the Hon. Richard Henry Lee, Esq. one of the delegates from Virginia, and the Hon. Samuel Adams, Esq., one of the delegates from Massachusetts Bay, in a coach and six provided by Congress, waited upon the Minister at his house. In a few minutes, the Minister and the two delegates entered the coach, Mr. Lee placing himself at the Minister's left hand on the back seat, Mr. Adams occupying the front seat, the Minister's chariot, being behind, received his secretary. The carriages being arrived at the state-house in this city, the two members of Congress, placing themselves at the Minister's left hand, a little before one o'clock, introduced him to his chair in the Congress chamber, the President and Congress sitting.—The

\* We have, perhaps, already too much multiplied extracts in the text, but we beg to introduce one more from a very entertaining writer on the French court. "Franklin appeared at court in the dress of an American cultivator. His straight, unpowdered hair, his round hat, his brown cloth coat, formed a contrast with the laced and embroidered coats, and the powdered and perfumed heads of the courtiers of Versailles. This novelty turned the enthusiastic heads of the French women. Elegant entertainments were given to Dr. Franklin, who to the reputation of a Philosopher, added the patriotic virtues which had invested him with the noble character of an Apostle of Liberty. I was present at one of these entertainments, when the most beautiful woman out of three hundred, was selected to place a crown of laurels upon the white head of the American philosopher, and two kisses upon his cheeks."

Minister being seated, he gave his credentials into the hands of his secretary, who advanced and delivered them to the President. The secretary of Congress then read and translated them; which being done, Mr. Lee announced the Minister to the President and Congress;—at this time the President, the Congress, and the Minister rose together; he bowed to the President and the Congress,—they bowed to him; whereupon, the whole seated themselves. In a moment the Minister rose and made a speech to Congress, they sitting. The speech being finished, the Minister sat down, and giving a copy of his speech to his secretary, he presented it to the President. The President and the Congress then rose, and the President pronounced their answer to the speech, the Minister standing. The answer being ended, the whole were again seated, and the President, giving a copy of the answer to the secretary of Congress, he presented it to the Minister. The President, the Congress, and the Minister then again rose together: the Minister bowed to the President, who returned the salute, and then to the Congress, who also bowed in return; and the Minister having bowed to the President, and received his bow, he withdrew, and was attended home in the same manner in which he had been conducted to the audience. Within the bar of the house the Congress formed a semicircle on each side of the President and the Minister: The President sitting at one extremity of the circle at a table upon a platform elevated two steps—the Minister sitting at the opposite extremity of the circle in an arm-chair upon the same level with the Congress. The door of the Congress chamber being thrown open below the bar, about two hundred gentlemen were admitted to the audience, among whom were the Vice President of the Supreme Executive Council of Pennsylvania, the Supreme Executive Council, the Speaker and Members of the House of Assembly, several foreigners of distinction, and officers of the army. The audience being over, the Congress and the Minister at a proper hour repaired to an entertainment given by the Congress to the Minister, at which were present by invitation several foreigners of distinction and gentlemen of public character. The entertainment was conducted with a decorum suited to the occasion, and gave perfect satisfaction to the whole company.

“IN CONGRESS, Aug. 6, 1778.

“According to order, the honourable the Sieur Gerard being



introduced to an audience by the two members for that purpose appointed, and being seated in his chair, his secretary delivered to the President a letter from his most Christian Majesty, which was read in the words following :

“ Very dear, great friends and allies—

“ The treaties, which we have signed with you in consequence of the proposals your Commissioners made to us in your behalf are a certain assurance of our affection for the United States in general and for each of them in particular, as well as of the interest we take and constantly shall take in their happiness and prosperity. It is to convince you more particularly of this, that we have nominated the *Sieur Gerard*, Secretary of our Council of State, to reside among you in the quality of our Minister Plenipotentiary. He is better acquainted with our sentiments towards you and the more capable of testifying the same to you, as he was intrusted on our part to negotiate with your Commissioners, and signed with them the treaties, which cement our union. We pray you to give full credit to all he shall communicate to you from us, more especially when he shall assure you of our affection and constant friendship for you. We pray God, very dear, great friends and allies, to have you in his holy keeping. Your good friend and ally.

(Signed)

“ LOUIS.

“ Versailles, March 18, 1778.

(Undersigned)

“ GRAVIER DE VERGENNES.

(Directed)—“ To our very dear, great friends, the President and Members of the General Congress of North America.”

Omitting the speech of *M. Gerard*, the following was the answer of the President on the occasion.

“ Sir,—The treaties between his most Christian Majesty and the United States of America, so fully demonstrate his wisdom and magnanimity as to command the reverence of all nations. The virtuous citizens of America, in particular, can never forget his beneficent attention to their violated rights, nor cease to acknowledge the hand of a gracious Providence in raising them up so powerful and illustrious a friend. It is the hope and opinion of Congress, that the confidence his Majesty reposes in the firmness of these States will receive additional strength from every day's experience. This assembly are convinced, sir, that if it had rest-

ed solely with the most Christian King, not only the independence of these States would have been universally acknowledged, but their tranquillity fully established. We lament that lust of domination which gave birth to the present war, and hath prolonged and extended the miseries of mankind. We ardently wish to sheathe the sword and spare the further effusion of blood; but we are determined by every means in our power to fulfil those eventual engagements, which have acquired positive and permanent force from the hostile designs and measures of the common enemy. Congress have reason to believe that the assistance so wisely and generously sent, will bring Great Britain to a sense of justice and moderation, promote the common interests of France and America, and secure peace and tranquillity on the most firm and honourable foundation. Neither can it be doubted that those, who administer the powers of government within the several states of this Union, will cement that connexion with the subjects of France, the beneficial effects of which have already been so sensibly felt. Sir, from the experience we have had of your exertions to promote the true interests of our country, as well as your own, it is with the highest satisfaction Congress receives, as the first Minister from his most Christian Majesty, a gentleman whose past conduct affords a happy presage, that he will merit the confidence of this body, the friendship of its members, and the esteem of the citizens of America."

Dr. Franklin, having been elected Minister to the Court of France, his letter of credence was agreed to by Congress on the 21st October 1778 ;—the first Minister Plenipotentiary to a foreign court, appointed by this country. We believe no one will have doubts of the propriety of appointing a single envoy to Versailles, after reading Dr. Franklin's own remarks on the subject.

—"Speaking of Commissioners in the plural, puts me in mind of enquiring, if it can be the intention of Congress to keep three ambassadors at this Court. We have, indeed, four with the gentleman intended for Tuscany, who continues here, and is very angry, that he was not consulted in making the treaty, which he could have mended in several particulars, and, perhaps, he is angry with some reason, if the instructions to him do, as he says they do, require us to consult him. We shall soon have a fifth, for the envoy

to Vienna, not being received there, is, I hear, returning hither.—The necessary expense of maintaining us all is, I assure you, enormously great. I wish the utility may equal it. I imagine every one of us spends nearly as much as Lord Stormont\* did. It is true, he left behind him the character of a niggard, and when the advertisement appeared for the sale of his household goods, all Paris laughed at an article of it, perhaps, very innocently expressed, “a great quantity of table linen, that has never been used.” “That is very likely,” say the French, “for he never invited any one to dine.” But as to our number, whatever advantage there might be in the joint counsels for framing and adjusting the articles of the treaty, there can be none in having so many for managing the common business of a president here. On the contrary, all the advantages in negotiation that result from secrecy of sentiment and uniformity in expressing it, and in common business for despatch, are lost. In a Court too, where every word is watched and weighed, if a number of Commissioners do not every one hold the same language in giving their opinion on any public transaction, this lessens their weight; and where it may be prudent to put on or avoid certain appearances of concern, for example, or indifference, satisfaction or dislike, where the utmost sincerity and candour should be used, and would gain credit, if no semblance of art showed itself in the inadvertent discourse, perhaps, of only one of them, the hazard is in proportion to the number. And where every one must be consulted on every particular of common business, in answering every letter, and one of them is offended, if the smallest thing is done without his consent, &c. The difficulty of being often and long enough together, the different opinions and the time consumed in debating them, the interruption by new applicants in the time of meeting, &c.—occasions so much postponing and delay, that correspondence languishes and occasions are lost, and the business is always behind hand. I have mentioned the difficulty of being often and long enough together: this is considerable, where they cannot be all accommodated in the same house: But to find three people, whose tempers are so good and who like one another’s company and manner of living and conversing as to agree with themselves, though living in one house, and whose servants will not, by their indiscretion, quarrel with one another, and

\* English Minister.

by artful misrepresentations draw their masters in to take their parts, to the disturbance of necessary harmony, these are difficulties still greater, and almost insurmountable. And in consideration of the whole, I sincerely wish the Congress would separate us."

In September '79, M. Gerard had a private audience of Congress in order to take leave. He was succeeded by the Chevalier de la Luzerne.\* This gentleman, created a Marquis, obtained, in 1784, the permission of his court to return, and was succeeded by M. de Marbois as Chargé d'Affaires. After he had sailed for Europe, M. de la Luzerne received from Mr. Jefferson, Secretary of State under the new government, the following flattering letter.

"NEW-YORK, April 30, 1790.

"Sir,—When in the course of your legation to the United States, your affairs rendered it necessary that you should absent yourself a while from that station, we flattered ourselves with the hope that that absence was not final. It turned out in event, that the interests of your sovereign called for your talents and the exercise of your functions in another quarter. You were pleased to announce this to the former Congress, through their Secretary for Foreign Affairs, at a time when that body was closing its administration, in order to hand it over to a government, then preparing on a different model. This government is now formed, organised, and in action, and it considers among its earliest duties, and assuredly among its most cordial, to testify to you the regret, which the people and government of the United States felt at your removal from among them—a very general and sincere regret, and tempered only by the consolation of your personal advancement, which accompanied it.

"You will receive, sir, by order of the President of the United States, as soon as it can be prepared, a Medal and Chain of gold, of which he desires your acceptance, in token of their esteem and of the sensibility, with which they will ever recall your legation to their memory.

\* "M. de la Luzerne's family is among the best and most honourable of this country. He has been Minister to the court of Munich, and is a gentleman of honour and ability." Extract from a letter of A. Lee.

"But as this compliment may, hereafter, be rendered to other missions, from which your's was distinguished by eminent circumstances, the President of the United States wishes to pay you the distinguished tribute of an express acknowledgment of your services, and our sense of them. You came to us, sir, through all the perils, which encompassed us on all sides. You found us struggling and suffering under difficulties as singular and trying, as our situation was new and unprecedented. Your magnanimous nation had taken side with us in the conflict, and yourself became the centre of our common councils, the link which connected our common operations. In that position, you laboured without ceasing, till all our labours were crowned with glory to your nation, freedom to ours, and benefit to both. During the whole, we had constant evidence of your zeal, your abilities, and your good faith; and we desire to convey this testimony of it home to our own breast, and to that of your sovereign, our best and greatest friend: and this I do, sir, in the name and by the express instruction of the President of the United States."

An unfortunate and disagreeable misunderstanding took place, during Dr. Franklin's residence as Minister, between M. de Vergennes and Mr. Adams. The first commission of Mr. Adams had been annulled by Franklin's appointment to Versailles, but in 1779 he returned to France in the frigate *La Sensible*, having been elected by Congress sole Commissioner for a peace with England,—a measure adopted by the advice of Vergennes. Mr. Adams fixed his residence at Paris; and his letters to Congress are valuable for the reports of news, remarks on the political state of Europe, and for copies of the principal European state papers of the times. It is obvious, he was not an accredited Minister, but having been much in France, fully in the confidence of his own government, and probably on a friendly footing with the principal Minister at Versailles, it is not surprising, he should have felt himself entitled to offer his advice freely on public affairs. But some observations, concerning a resolution of Congress of March 18, '80, and a disposition of part of the French fleet, were not received in the spirit, by which they were doubtless dictated. The tone of M. de Vergennes'

reply was such as necessarily put an end to the correspondence, though no notice appears to have been taken of the business by Congress. "I have received," said the Minister, "the letter you did me the honour to write me on the 27th of this month. I did not expect the animadversions, you have thought it proper to make on a passage of my letter of the 20th current. To avoid any further discussions of that sort, I think it my duty to inform you, that Dr. Franklin, being the sole person that has letters of credence to the King from the United States, it is with him only, that I ought and can treat of matters, which concern them, and particularly of that, which is the subject of your observations." This letter was sent July 31, 1780, by Vergennes to Franklin, with the following remarks—"The character with which you are invested, your wisdom, and the confidence I have in your sentiments and fine principles, induce me to communicate to you a correspondence I have had with Mr. Adams. You will find, I think, in the letter of that plenipotentiary, opinions and a turn, which do not correspond, either with the manner in which I explained myself to him, or with the intimate connexion, subsisting between the King and the United States. You will make the use of these papers your prudence shall suggest. As to myself, I desire you will transmit them to the Congress, that they may be informed of the line of conduct Mr. Adams pursues in regard to us, and that they may judge, whether he is endowed with that conciliatory disposition, which is necessary for the important and delicate business, with which he is intrusted."—These letters were transmitted to Congress, with some remarks by Dr. Franklin.

"PASSY, August 9, 1780.

"To His Excellency Samuel Huntington, President of Congress.

"Mr. Adams has given offence to the Court here by some sentiments and expressions, contained in several of his letters, written to the Count de Vergennes. I mention this with reluctance, though, perhaps, it would have been my duty to acquaint you with such a circumstance, even if it were not required of me by the Minister himself. He has sent me copies of the corres-

pondence, desiring I would communicate them to Congress, and I send them herewith. Mr. Adams did not show me his letters before he sent them. I have, in a former letter to Mr. Lovell, mentioned some of the inconveniences that attend the having more than one Minister at the same Court, one of which inconveniences is, that they do not always hold the same language, and that the impressions, made by one, and intended for the service of his constituents, may be effaced by the discourse of the other. It is true, that Mr. Adams's proper business is elsewhere, but the time not being come for that business, and having nothing else here wherewith to employ himself, he seems to have endeavoured supplying, what he may suppose my negotiations defective in. He thinks, as he tells me, himself, that America has been too free in expressions of gratitude to France, for that she is more obliged to us than we are to her, and that we should show spirit in our applications. I apprehend that he mistakes his ground, and that this Court is to be treated with decency and delicacy. The King, a young and virtuous prince, has, I am persuaded, a pleasure in reflecting on the generous benevolence of the action in assisting an oppressed people, and proposes it as a part of the glory of his reign: I think it right to increase this pleasure by our thankful acknowledgments, and that such an expression of gratitude is not only our duty, but our interest. A different conduct seems to me what is not only improper and unbecoming, but what may be hurtful to us. Mr. Adams, on the other hand, who at the same time means our welfare and interest as much as I, or any man can do, seems to think a little apparent stoutness and greater air of independence and boldness in our demands, will procure us more ample assistance. It is for the Congress to judge and regulate their affairs accordingly. M. de Vergennes, who appears much offended, told me yesterday that he would enter into no further discussions with Mr. Adams, nor answer any more of his letters. He is gone to Holland, to try, as he told me, whether something might not be done to render us a little less dependent on France. He says, the ideas of this Court, and those of the people in America, are so totally different, as that it is impossible for any Minister to please both. He ought to know America better than I do, having been there lately; and he may choose to do, what he thinks will best please the people of America: but when I consider the expressions of Congress in many of



their public acts, and particularly in their letter to the Chevalier de la Luzerne, of the 24th of May last, I cannot but imagine that he mistakes the sentiments of a few for a general opinion."\*

"B. FRANKLIN."

Though not precisely connected with the subject of this chapter, yet as an incident in Dr. Franklin's embassy, and as belonging to the diplomacy of the period, we shall here insert two letters which passed, in 1784, between him and the Count de Mercy Argenteau, Minister Plenipotentiary of his Imperial Majesty.

"I have the honour (July 30, 1784) to communicate to your Excellency an extract from the instructions of Congress to the late Commissioners, expressing their desire to cultivate the friendship of his Imperial Majesty, and to enter into a treaty of commerce for the mutual benefit of the two nations, which I request you will be pleased to lay before his Imperial Majesty. The appointing and instructing Commissioners for treaties of commerce with the European powers have, by various circumstances, been long delayed, but is now done, and I have just received advice that Mr. Jefferson, Governor of Virginia, commissioned with Mr. Adams, our Minister in Holland, and myself, for that service, is now on his way hither, and may be expected by the end of August, when we shall all be ready to enter into a treaty with his Majesty for the above purpose, if such should be his pleasure."—"I have received," writes M. d'Argenteau in reply, "the letter you did me the honour to address to me this morning, and I shall lose no time in transmitting it to my Court. The sentiments of the Emperor towards the United States enable me to foresee the satisfaction his Imperial Majesty will experience in entering into satisfactory, reciprocal and advantageous connexions with them. I have not the least doubt but that measures will be instantly taken on that subject to concert with you and the other Commissioners. I shall immediately communicate the answer of my Court."

\* It has always been understood that, on the communication of these documents to Congress, a violent discussion arose, but the confidence of the government was not withdrawn from Mr. Adams. On the contrary, he was continued in the station he occupied at the time of this affair, and, subsequently, was the first Minister, appointed by the Confederation, to England.

In January 1784, Dr. Franklin obtained permission of Congress to return to this country, after having made repeated applications for this indulgence ;—one of which was addressed to the President of Congress as early as March 1781, and, besides the sentiments it contains, is a good specimen of the pleasing simplicity of style, for which this illustrious man was justly celebrated.

—" I must now beg leave to say something relating to myself, a subject, with which I have not often troubled Congress. I have passed my seventy-fifth year, and find that the long and severe fit of the gout, which I had the last winter, has shaken me exceedingly, and I am yet far from having recovered the bodily strength I before enjoyed. I do not know that my mental faculties are impaired, perhaps I shall be the last to discover that, but I am sensible of a great diminution in my activity, a quality, I think, particularly necessary in your Minister for this Court. I am afraid, therefore, that your affairs may, some time or other, suffer by my deficiency. I find, also, that the business is too heavy for me, and too confining. The constant attendance at home, which is necessary for receiving and accepting your bills of exchange (a matter foreign to my ministerial functions); to answer letters, and perform other parts of my employment, prevents my taking the air and exercise, which my annual journeys formerly used to afford me, and which contributed much to the preservation of my health. There are many other little personal attentions, which the infirmities of age render necessary to an old man's comfort, even in some degree to the continuance of his existence; and with which business often interferes. I have been engaged in public affairs, and enjoyed public confidence in some shape or other, during the long term of fifty years, an honour sufficient to satisfy any reasonable ambition, and I have no other left than that of repose, which I hope the Congress will grant me, by sending some person to supply my place. At the same time, I beg they may be assured, that it is not any, the least, doubt of their success in the glorious cause, nor any disgust received in their service, that induces me to decline it, but purely and simply the reasons above mentioned. And as I cannot at present undergo the fatigues of a sea voyage (the last having been almost too much for me), and would not again expose myself to the hazard of capture and imprisonment in this time of war, I

purpose to remain here, at least, till the peace, perhaps it may be for the remainder of my life,—and if any knowledge or experience I have acquired here may be thought of use to my successor, I shall freely communicate it, and assist him with any influence I may be supposed to have, or counsel that may be desired of me.”\*

Before Dr. Franklin's departure, he received from M. de Vergennes a letter, of which every one will acknowledge the just and appropriate character of the sentiments, though the form of the expressions is altogether heartless and office-like. “I have learnt with much concern your retiring, and approaching departure for America. You should not doubt but that the regrets you will leave, will be proportionate to the consideration, you so justly enjoy. I can assure you, sir, that the esteem the King entertains for you, leaves you nothing to desire, and that his Majesty will learn, with real satisfaction, that your fellow citizens have rewarded, in a manner worthy of you, the important services you have rendered them. I beg, sir, that you will preserve me a share in your remembrance, and never doubt of the sincerity I take in your happiness. It is founded on the sentiments of attachment of which I have assured you, and with which I have the honour to be,” &c.

Dr. Franklin had the uncommon honour and good fortune

\* Extract of a letter from John Jay, &c. “Madrid, 21st April 1781. (Private).—By the letter from Dr. Franklin, herewith enclosed, and which he was so obliging as to leave open for my perusal, I find he has requested permission to retire, on account of his age, infirmities, &c. How far his health may be impaired, I know not. The letters I have received from him bear no marks of age, and there is an acuteness and sententious brevity in them, which do not indicate an understanding injured by years. I have many reasons to think our country much indebted to him, and I confess it would mortify my pride as an American, if his constituents should be the only people, to whom his character is known, that should deny his merit and services the testimony given them by other nations. Justice demands of me to assure you, that his reputation and respectability are acknowledged, and have weight here, and that I have received from him, all that uniform attention and aid, which was due to the importance of the affairs committed to me.”

of taking a principal part in forming the two most important treaties made by America ;—the treaty of Alliance and Commerce with France, and the first treaty with England, in which the mother country acknowledged the independence of these United States. His name stands on both these instruments. His long residence in France, it is well known, was agreeable to the French court, though we have never been able to ascertain the grounds of a remark, often made, that this arrangement was effected by the intrigues of M. de Vergennes, who found Dr. Franklin more obsequious than either of his colleagues. Dr. Franklin was named Envoy at the Court of Versailles with uncommon propriety. He was the oldest Commissioner in Europe, advanced in life, and on account of his great celebrity in philosophy, undoubtedly possessed considerable influence. He was employed to much more advantage abroad, than he could have been at home, for he possessed talents, manners and address, exceedingly suitable to his station and the affairs in which he was engaged.

In March 1785, Thomas Jefferson was chosen Minister Plenipotentiary to succeed Dr. Franklin at the court of Versailles. Mr. Jefferson had been engaged in a great deal of important business at home ; but before this period, had not been employed abroad, though elected to the commission for the peace with England.\*

\* During Mr. Jefferson's first residence in Paris, an individual, whose name is not given, waited on him, and informed him, that he had in his possession Mr. Silas Deane's letter-book and all his accounts, which he proposed to sell to the English Minister for 150 guineas. Mr. Jefferson examined the papers, and returned them, as he had no authority to make purchases of that sort ;—and was told by the person, that he should sell them to the British government. Having transmitted an account of this business to Congress, Mr. Jefferson subsequently received authority to buy the manuscripts, which he effected, by means of a friend in London, for 40 guineas. They were deposited in the Department of State. The individual was, no doubt, sent by Deane himself ; and it is quite evident, that the British government did not consider the papers of any value ; or, at least, not worth 40 guineas.

## CHAPTER III.

## TREATY OF 1782 WITH THE NETHERLANDS.

*Second power to make a Treaty with United States—War between United Provinces and England—Causes—Lee, sailing at Berlin, enters secretly into a correspondence with the Regency of Amsterdam—not suspected by Sir Joseph Yorke—Early correspondence between Van Berckel and commissioners—Lee agrees, at Frankfort, on a Treaty with Neuville—Secret discovered by capture of Laurens—Amsterdam richest City in Europe—Laurens's letters from Tower of London—Laurens chosen to Holland—Subsequently Adams—His letters from Holland—States General very dilatory in recognising Independence—Three classes of Treaties—Remarks on National Law—Neutral Rights badly defined—United States first commercial rival of England—Other nations rivals in war—Mr. Adams concludes a Treaty, and makes Loans—Van Berckel appointed Minister to United States.*

THE government of the United Netherlands,\* was the second power in Europe, that made a treaty with the Unit-

\* The reader will observe, that this kingdom, as now constituted, did not exist, until the year 1814; it is one of the creations of the treaties of Paris, and of Vienna. The treaty of Paris, of May of that year, assigned to Holland, placed under the government of the House of Orange Nassau, an addition of territory. To this dominion, the Allied Sovereigns, at the time they were in London, in the summer of 1814, annexed Belgium.—(Schoell, vol. x. p. 534.) The limits of this kingdom were afterwards defined, in the 2d article of the treaty of Vienna, of May 1815.—(Recueil des Pièces Officielles, &c. vol. viii. p. 309.) In the time of the American Revolution, Belgium, (la Belgique,) a modern French name, (Belgica Gallia,) for what was called, in English geography, the Netherlands, or the Low Countries, was divided into French, Dutch, and Austrian Flanders, and did not exist as a separate government. The treaty of 1782 was made with that part of the present kingdom of the Netherlands, called, in the treaty of Paris of 1814, Holland. It is well known, in history, by the title of the States General, or Seven United Provinces of Holland.

ed States, though not actually signed, till the year 1782, towards the close of the revolution; but with the exception of France, America derived more aid from Holland, in the shape of military stores, and money, and by obtaining protection for her vessels in the Dutch West Indies, than any other state in Europe.

The connexion of Holland with America,—the severity with which England exercised her great power on the ocean, in relation to convoys, contrabands, and the privileges of the neutral flag, in the beginning of the contest with the colonies,—produced a feeling of extreme irritation and jealousy; and ultimately led, in 1780, to a declaration of hostilities, on the part of the latter government. An English writer has explained, in a full and able manner, the cause of this war, an event, in which the United States were, at the time, greatly interested. We cannot do better than extract a portion of his remarks; though a proper allowance should be made, for the warmth with which the author vindicates the acts of his government, and the principles of English maritime law:—

“At the commencement of hostilities between Great Britain and her colonies, Holland, in conformity with the conduct of other European powers, forbade the export of ammunition and stores for one year; but, when the success of the colonists, and the declaration of independence, afforded flattering hopes of acquiring a portion of that commerce, which the English had hitherto monopolized, Holland began to grasp at the advantage, and encouraged an illicit trade with America. Every motive arising from long and beneficial alliance, similarity in religion, and political interests, combined to deter Holland from a mode of conduct, repugnant from the interests of Great Britain; but a faction, in the French interest, and inimical to the Stadtholder, influenced all the proceedings of government. The open encouragement, afforded to American privateers, in the Dutch West India islands, occasioned a long correspondence, which terminated in the delivery of a spirited memorial by Sir Joseph Yorke, the British ambassador at the Hague. The States General returned an humble and complying answer, denying an intention to recognise the independence of America,

and consenting to the recall of Van Graaf; but they complained of the harsh terms in the memorial,—and, as a mark of indignation, ordered Count Walderen, their envoy extraordinary in London, not to correspond, on the occasion, with Sir Joseph Yorke, or Lord Suffolk, the secretary of state, but to deliver his memorial to the King in person.”——“Sir Joseph Yorke had resided in Holland 27 years, was thoroughly acquainted with the state and temper of parties, and knew the preponderance of French interest, and the fatal supineness of the Stadtholder. He vindicated, in an able memorial, the conduct of Great Britain; and, while he displayed the moderation of the King, in not plunging Holland into a war, by demanding the succours, stipulated in the treaties of 1678 and 1716, proposed to discuss the grievances in a conference,—prefacing the offer with an assurance, that the prevention of contraband trade should, in the mean time, be subject to no interpretation, unwarranted by the rules of equity, and the practice of perfect generosity. This proposal occasioned violent exertions among the French party. The Duke de Vauguyon, ambassador from the court of Versailles, endeavoured to pique the pride and interest of the Dutch, by demanding a clear and explicit determination, to accept or renounce the advantages of commerce, proffered by a decree of the French Council of State, allowing the traffic in naval stores, during the war. The proposition was not, however, accepted; and the French Court repealed the permission given to Holland, of trading with them duty free,—*admitting, to the exclusive enjoyment of this privilege, Amsterdam alone*, ‘in consideration of the patriotic exertions made by that city, to persuade the republic to procure, from the court of London, the security of that unlimited commerce, which belonged to the Dutch flag.’”——“The arts and influence of France were, however, more effectual than the remonstrances of England; and, when Spain was added to the hostile combination, the striking partiality of Holland, towards the enemies of Great Britain, rendered more decisive explanations indispensable. Sir Joseph Yorke, therefore, in pursuance of instructions from England, demanded from the States General the succours, stipulated in the several treaties, of which the *casus fœderis* was fully explained in the separate article of 1716.”——“At this juncture, a fresh cause of dispute arose, in consequence of the reception afforded to Paul Jones and his prizes, in the harbours of

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the republic. Sir Joseph Yorke demanded the detention of the ships and crews; as Paul Jones, though a pretended American, was a native of Scotland, a pirate, rebel and state criminal. The States General refused compliance, alleging their constant maxim, not to decide on the legality of captures by the vessels of any other country."—"The state of sullen dissatisfaction, which occasioned the abolition of the ancient connexion between Great Britain and Holland, resolved itself into active hostility; the mystery, which had covered the views and conduct of the Dutch, was dispelled by accident; and the court of Great Britain was impelled to a firm and decisive mode of conduct, as well in resentment of past treachery, as with a view to counteract the effects of the neutral league. The *Vestal* frigate, commanded by Captain Keppel, took, near the Banks of Newfoundland, a Congress packet. The papers were thrown overboard, but, by the intrepidity of an English sailor, recovered with little damage. They fully proved the perfidy of the Dutch; who, before the existence of any dispute, entered into a formal treaty of amity and commerce with the revolted colonies, fully recognising their independence, and containing many stipulations, highly injurious to England, and beneficial to her enemies, both in Europe and America. Disagreements on some of the arrangements, had occasioned delays in its completion; but Henry Laurens, late President of the Congress, who was one of the passengers in the captured vessel, was authorized to negotiate definitively, and entertained no doubt of success."—"This remonstrance also failing, a royal manifesto was issued, declaring hostilities against Holland."

We shall have occasion to remark, under the head of Prussia, that William Lee, of Virginia, was sent by Congress to Berlin, as commissioner, as early as 1777; but it does not appear that any person had been directed to proceed to Holland; for the ancient alliances, and friendly treaties, between the provinces and Great Britain, made it extremely unlikely, any assistance could be obtained in that quarter. The greater part of Dutch commerce being obliged to pass through the British channel, and the navy being in a state of decay, Holland was necessarily under the control, to a great degree, of the English fleets. It is evident, however, that as early

as October 1778, some correspondence had taken place between the commissioners at Paris and Francis Van Berckel, a burgomaster of Amsterdam. In answer to a letter from him, they propose that a person should be sent to Aix-la-Chapelle to treat of the business of a Convention in the most secret manner. But this intercourse was never suspected by the British minister, Sir Joseph Yorke.\* Though his letters to the States General abound with complaints and remonstrances, upon almost all topics, touching the neutral character of the Dutch, there is not the most distant allusion to any secret correspondence between any one of the provinces and the American government. He certainly was not aware, that the confederacy had an agent at Amsterdam, or its neighbourhood. The correspondence, however, was confined to the government of one of the principal towns of the United Provinces, well known to have great influence over the whole Dutch confederacy; and there is no reason to suppose, that it was known to the States General. On the 4th of September 1778, Mr. Lee agreed with M. de Neufville, a respectable merchant of Amsterdam, acting by the authority of Mr. Van Berckel, pensionary of the city, on the plan of a treaty of commerce and amity between the two countries. These gentlemen appear to have met by accident at Frankfort, (Mr. Lee being, probably, on his return from Germany) and in that city the treaty was drawn up and signed.† He had no authority from the commissioners to act, and they afterwards disavowed the proceeding, though in a letter to the secret committee from Paris, dated September 12, 1778, he expresses some doubts, whether he shall communicate the instrument to them. But the transaction was the official act of the pensionary, as appears from the following declaration. "This is a rough plan of a Treaty of Commerce, which, in consequence of the appointment and instructions of the honourable Mr. Engelbert Francis Van Berckel, counsellor, pensionary of the city of Amsterdam, to me, John de Neufville, citizen of the said city of

\* Afterwards Lord Dover.

† See Parliamentary His. vol. xxi. app. 98, for this treaty.

Amsterdam, I have perused, considered and settled with William Lee, Esq. Commissioner of Congress, as a proper treaty of commerce to be entered into between their high mightinesses, the States of the Seven United Provinces of Holland, and the United States of North America. This done at Aix-la-Chapelle, the 4th of September 1778.

JOHN DE NEUFVILLE."

We shall not extract any portion of this treaty, as it does not differ materially from the one, subsequently concluded with the provinces, though not so full and definite in some provisions. Mr. Lee was not furnished with power, from his government, even to open a negotiation, and the regency of Amsterdam acted, in the business, only by their own authority. The instrument, it is obvious, was not binding upon either party. Indeed, it may well be matter of doubt, whether the proceeding was much more than the private act of Mr. Van Berckel and his friends; for Amsterdam was, at that time, the centre of the factions and parties, that distracted and divided the "republic." It appears, however, that, when the documents, accompanying this transaction, were communicated by the States General to the Pensionary and magistrates of that city, the affair was justified by them. And, it is probable, the arrangement would never have been known, but for the unlucky accident, by which Mr. Laurens' papers fell into the hands of the enemy. We shall observe, in this place, that the States General, in November 1780, disavowed, on the requisition of Sir Joseph Yorke, the conduct of the Pensionary, as having taken place without their knowledge; but they refused to punish him, or any other person, concerned in the transaction. Their High Mightinesses took that matter, as they expressed it, *ad referendum*; the nature of that process, in the Dutch government, can easily be guessed.\*

\* The States General ordered Jones to leave the Texel, after he had been supplied with what seemed to be required by humanity. The English would not allow the Dutch to carry to its enemy ship timber, though it was not specified among the contrabands, by the treaty of

When this secret proceeding became known to the American Congress, they were at once satisfied of the feelings of, at least, a portion of the people of Holland. In those days, Amsterdam was, probably, the richest city in Europe; the rate of interest was usually low; and not only many foreign merchants, but even governments, were in the habit of opening loans in that celebrated mart. Money could be procured on more favourable terms, from the circumstance, that Amsterdam was just showing the first symptoms of its decline.\* Great capitals had been accumulated; but its trade having fallen off, while the well known habits of industry, prudence and frugality of its merchants remained, there was a redundancy of money in the home market. Amsterdam, with the other cities of Holland and the Low Countries, was then beginning to feel the fatal influence of that power and competition, which has since deprived them of their colonies and carrying trade. The two epochs, to which we may assign the origin of this commercial superiority, are the treaties of 1763, and that of 1783 between America and England.

Congress made no preparations before October 1779, to open a direct communication with the Low Countries. Mr. Laurens, of South Carolina, was, in that month, chosen, both to make a treaty of amity and commerce, and to negotiate a loan, not to exceed 10,000,000 dollars in amount, at a rate of interest, not to exceed 6 per cent. We have already said, that Mr. Laurens was taken, the next year, going to Holland.† Mr. Adams, who had previously gone to Europe, in the capacity of a commissioner for a general peace, was directed to proceed to Holland, on the business assigned to Mr. Laurens, and arrived there in the beginning of the year '81.‡ In the preceding autumn the same commissioner

1674. The English contended, that wood was included in those clauses of the subsequent treaties, which forbid the Dutch to assist the enemies of Great Britain with any article required in war.

\* Macpherson's Annals of Commerce, vol. iii.

† He was not liberated till '82, when he was exchanged for Lord Cornwallis.

‡ Mr. Laurens, it is well known, was thrown into the Tower and confined many months. We have seen several of his letters, while

made a journey to Amsterdam from Paris for the purpose of procuring a loan, but he met with no encouragement. Several letters, addressed to the President of Congress from that city still exist, but we shall limit our extracts to two paragraphs, written in the month of December.

"War is to a Dutchman the greatest of evils. Sir Joseph Yorke is so sensible of this, that he keeps alive a continual fear of it by memorials after memorials, each more affronting to any sovereignty of delicate notions of dignity than the former. By this means he keeps up the panic, and while this panic continues, I shall

in England; we shall extract only two;—one, dated Tower of London, December 20, 1781, and written with a *lead pencil*. "Almost fifteen months I have been closely confined, and inhumanly treated, and even now have not a prospect of relief. The treaty for exchange is abortive. There has been languor or neglect somewhere. If I want your attention, you will no longer delay the only speedy and efficacious means for my relief. Enter this, if you please, and what it may produce, on your secret journal, and pardon the omission of ceremony. I am full of love and respect for you. Henry Laurens. A friend will trace the direction in ink." "Amsterdam, 30 March 1782. On the 31 December, being, as I had long been, in a state of extreme ill health, unable to rise from my bed, I was carried out of the Tower to the presence of the Lord Chief Justice of England, and admitted to bail, to appear at the Court of King's Bench on the first day of Easter Term, and not to depart thence without leave of the court. This measure, it seems, had been preconcerted and determined on without my solicitation or knowledge, but I refused to enter into that or any other obligation, till I had previously made the following declaration to Mr. Chamberlain, solicitor of the treasury, in the hearing of divers officers of the court, the governor and deputy governor of the Tower, who attended, on the occasion, at Serjeants Inn. 'In order to prevent or save trouble, as I do not know the nature of the obligation to be required of me, I think it necessary to premise, that I will do no act, that shall involve me in an acknowledgment of subjection to this realm, and that I save and reserve to myself all the rights and claims of a citizen of the United free and independent States of North America.' This solemn abjuration of the king in one of his own courts was going as far as decency would permit, and I was at that moment in so low and languishing a state, that I could express myself no further. None but God knows what I suffered, and I expected nothing less than to be remanded immediately to the Tower."

certainly have no success at all. No man dares engage for me—very few dare see me.”

“The Dutch say that the English are acting the part of the sailor, who, having quarrelled with three others as stout as himself, and got his bones broke, and his eyes beat out, in the squabble, challenged four more to fight him at the same time, that he might have it in his power to make it up with all seven with *honour*.”

Notwithstanding the “republic” was at this time at war with England, and a party to the armed neutrality, the provinces do not appear to have participated in the eagerness of Amsterdam to recognise the independence of the United States. The States General were dilatory in all business, the forms of the government rendering despatch impossible. Nothing can proceed rapidly, where each member of a diet or assembly, not only holds in his own vote an absolute negative, but, before he is permitted even to give that vote, he is obliged to report the whole matter under consideration to a separate legislative body, who take as much time as they think proper to examine, discuss, and deliberate, before they send instructions to their delegate at the States General. There being seven distinct sovereign legislatures, Mr. Adams did not succeed till the autumn of '82 in obtaining from all the provinces their consent to the ratification of a treaty.\* Guelderland was the last state, that recognised

\* This treaty of amity and commerce was concluded on the 8th of October 1782 by Mr. Adams for America, and George Van Randwyck and seven others, deputies and plenipotentiaries, for the United Netherlands. The treaty, consisting of 29 articles, places commerce on the footing of the most favoured nation. The 4th article, respecting liberty of conscience is, we believe, peculiar to the treaties made by the U. States with the protestant nations of the continent of Europe; a similar provision will be found in the treaties with Sweden and Prussia.

“Art. 4. There shall be an entire and perfect liberty of conscience allowed to the subjects and inhabitants of each party, and to their families, and no one shall be molested in regard to his worship, provided he submits, as to the public demonstration of it, to the laws of the country. There shall be given, moreover, liberty, when any subjects or inhabitants of either party shall die in the territory of the

the independence, though others were quite early in declaring their sentiments. We shall not speak, in detail, of the

other, to bury them in the usual burying places, or in decent and convenient grounds to be appointed for that purpose, as occasion shall require; and the dead bodies of those who are buried, shall not in any wise be molested. And the two contracting parties shall provide, each one in his jurisdiction, that their respective subjects and inhabitants may henceforward obtain the requisite certificates of deaths, in which they shall be interested.

"Art. 6. Citizens of each party may dispose of their effects, by will or otherwise, in the dominions of the other.

"Art. 9. Citizens of either party allowed to manage their own business, in the dominions of the other, &c.

"Art. 10. A free trade was allowed to enemy's ports—a vessel, met at sea and delivering contrabands, was allowed to pass.

"Art. 11. Free ships free goods; and goods in an enemy's vessel as in treaty of '78.

"Art. 12. Goods, found in an enemy's ship, liable to be confiscated, unless put on board, before declaration of war, or within six months thereafter.

"Art. 16. In case of shipwreck, relief shall be afforded, and goods restored, if claimed within a year and a day, on payment of reasonable charges, &c.

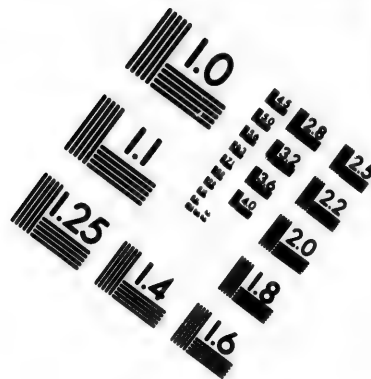
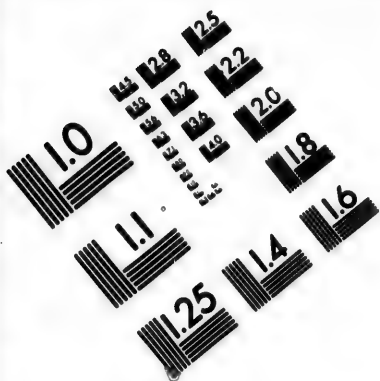
"Art. 18. In case of war, nine months allowed to citizens of either party, residing in the dominions of the other, to sell and transport their effects.

"Art. 19. Citizens of neither party shall take commissions, or letters of marque, from a prince or state with whom the other is at war.

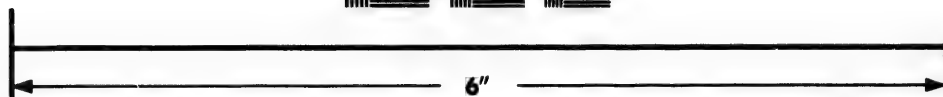
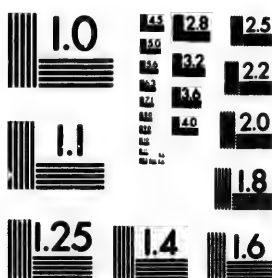
"Art. 24. The liberty of navigation and commerce shall extend to all sorts of merchandises, excepting only those which are distinguished under the name of contraband, or merchandises prohibited, and under this denomination of contraband and merchandises prohibited, shall be comprehended only warlike stores and arms, as mortars, artillery, with their artifices and appurtenances, fusils, pistols, bombs, grenades, gunpowder, salt petre, sulphur, match, bullets and balls, pikes, sabres, lances, halberds, casques, cuirasses, and other sorts of arms; as also soldiers, horses, saddles and furniture for horses; all other effects and merchandises not before specified expressly, and even all sorts of naval matters, however proper they may be for the construction and equipment of vessels of war, or for the manufacture of one or another sort of machines of war by land or sea, shall not be judged contraband, neither by the letter, nor according to any pre-







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treaty made on this occasion, as the leading provisions of it, touching the exercise of the right of search, contrabands and

tended interpretation whatever, ought they, or can they be comprehended under the notion of effects prohibited or contraband. So that all effects and merchandises, which are not expressly before named, may, without any exception, and in perfect liberty, be transported by the subjects and inhabitants of both allies, from and to places belonging to the enemy; excepting only the places which at the same time shall be besieged, blocked, or invested; and those places only shall be held for such, which are surrounded nearly by some of the belligerent powers.

"Art. 26. If the vessels of the said subjects or inhabitants of either of the parties, sailing along the coasts or on the high seas, are met by a vessel of war, or privateer, or other armed vessel of the other party, the said vessels of war, privateers, or armed vessels, for avoiding all disorder, shall remain without the reach of cannon, but may send their boats on board the merchant vessel, which they shall meet in this manner, upon which they may not pass more than two or three men, to whom the master or commander shall exhibit his passport, containing the property of the vessel, according to the form annexed to this treaty: and the vessel, after having exhibited such a passport, sea-letter, and other documents, shall be free to continue her voyage, so that it shall not be lawful to molest her, or search her in any manner, nor to give her chase, nor to force her to alter her course.

"Art. 27. Commanders, &c. of public and private vessels of the United States, may engage American seamen in ports of the United Netherlands, and the same for Holland."

The form of a passport, a certificate, and of a sea-letter was annexed to the treaty. On the same day, a convention was agreed on relative to prizes and re-captures.

"Art. 1. Re-captured vessels not having been twenty-four hours in possession of an enemy of either party, to be restored, on payment of one third salvage to the privateersmen.

"Art. 2. Re-captured vessels, more than twenty-four hours in possession of an enemy, to be entire prizes to privateersmen.

"Art. 3. Vessels of either party re-captured by public vessels of the other, to be restored, on payment of a thirtieth part, if 24 hours in possession of an enemy; if longer, a tenth part.

"Art. 5. Vessels of war and privateers, to be admitted, with their prizes, into the ports of both nations, if not inconsistent with the 22d article of the treaty of commerce."

the privileges of the neutral flag do not differ from the original draught prepared by Congress for all the commercial treaties. Indeed, we may remark in this place, that the *commercial* treaties, concluded by the United States with the powers of Europe, previous to the peace of Ghent, with the exception of England, contain the same general principles. The only additions on the score of neutral rights, made to the treaty of '78 with France, related to a definition of blockades, immunity of vessels under convoy, and an improved modification in the right of search. Some peculiar provisions, as will be seen under their proper head, were inserted in the treaty with Prussia; but, with this exception, we have had till 1815 but two classes of treaties—those with England, in which none of the neutral rights are recognised; and those with the continent, in which all the principal neutral doctrines are secured by stipulation. Till the year just mentioned, no material change was made on the subject of commerce—it rested on the almost universal modern arrangement, and in the old diplomatic phrase, of "*gentis amicitissima*." But latterly (beginning with England in 1815) another description of commercial treaties has been introduced—the basis is, reciprocity of duties and tonnage charges on importations, of the growth, produce and manufacture of the respective countries. This principle, extended either by convention or legislative enactment to the principal states in Europe, constitutes a new æra in the diplomacy of the United States, and in the commercial history of the world.

All that part of public law, called conventional, is laid down, as it appears to us, by writers on the subject, with great strictness and precision, more so than the history of diplomacy will, altogether, justify. The acts and practices of nations can alone serve as a guide in this business; and if we except the article of contrabands, the rights and duties of neutrals are obscurely defined in the treaties of the last century and a half; till, indeed, we reach the period of the first armed neutrality and American revolution war. From that date more uniformity of principles exists, as it respects treaties, concluded by one class of states. Before the ap-

pearance, therefore, of this country, an uncommon variety will be found for the regulation of neutral rights ; and, strictly speaking, there had been no great neutral power in the world before the United States. Even in treaties of very exact language, a legitimate blockade is defined in a vague manner ; it is made an affair of construction, and to settle construction between nations will always be attended with extreme difficulties. We know not how the principle of " free ships, free goods " was excluded from the code. We have not looked very accurately into the collections ; but we have no doubt, that three-fourths of the commercial conventions since that of Westphalia in 1668, expressly recognise this doctrine ; and though it is found, we believe, in every treaty made by this country, except those with England, the American government, at an early period of its history, declared it was not one of the established principles of the commercial laws of nations.\* We have no disposition to undervalue the labour of writers on public law. On the contrary, they have rendered great services to mankind ; for it is, obviously, important, that nations should possess a code to regulate their conduct in regard to each other. We cannot reduce public or national law to the precision of municipal. This is not necessary. But we may fairly suppose, that a code so decidedly improved during the last century, is susceptible, still, of greater perfection. The rights of belligerents are accurately defined ; so, that in truth, war, and the relations of nations in war, are now regulated by precise laws. This has been done by the progress of civilization ; and no one will deny, it has been highly beneficial. There is another part of this code still in a confused and unsatisfactory condition ;—an adjustment of the rights and duties of neutrals. There have been constant difficulties on the subject of blockades, contrabands, and the right of search ; but none of them are at all new ; they occurred with great severity in the application in the beginning of the last century. In the wars that have just ended, in which this country

\* See Mr. Jefferson's letter of July 24, 1793.

finally took a part, and which were, in some respects, maritime, not a single principle, beneficial to the neutral, has been secured. In all the treaties made in the celebrated years of 1814, 1816, treaties, that appear to guaranty the repose of the world for centuries, we find no allusion to the neutral. And it is, truly, a most discouraging circumstance, how completely all armed neutralities have been dissolved, and how entirely the obligation different states (this country among others) have entered into, to establish a convention for the protection of the neutral, have been forgotten on the return of peace. Still, he should not be in despair. The great improvements, taking place in society and in the intercourse of nations, will probably in time reach that portion of the code, that relates to him.

There has been in Europe, for three centuries, in a small, compact space, a remarkable collection and concentration of powerful nations;—the frontiers of the principal, laying so close to each other, that they had become rivals rather in arms than in commerce. Even the small states, forming a part of the balance of power, were drawn by the attraction of the larger bodies from a neutral position. Before the armed neutrality of the North, a scheme dictated by personal ambition and desire of aggrandizement, (partaking entirely of a political character, and as far as Russia and France were concerned) adopted for any other purpose than the benefit of neutrals, the period that may be selected, as most marked by favourable dispositions in regard to neutrals, is, probably, that of the peace and treaties of Utrecht. It is most likely that the balance of power was then more fairly and nicely adjusted;—it may, also, be the true date of the beginning of British commercial supremacy, though it was not very apparent till the peace of 1763. At any rate, as that supremacy rose, the hopes of the neutral have fallen. Since the time of Charles the V., all Europe has been occupied with a consideration of the balance of power, applied to the land, but a proper attention does not appear to have been paid to the unequal manner, in which power may be distributed on the ocean. To the maritime superiority of Great



Britain, no effective and steady resistance has been opposed for one hundred years, except by this country. The true fountain and strength of that resistance consists in the distant situation of the United States,—the habits and character of the people,—and the undoubted interest we have in maintaining neutrality. At the late great division of spoil in Europe, England was permitted to appropriate to her own use the best islands and commercial marts in every sea, while the other powers were busy in seeking indemnities, reclaiming statues and pictures, and rounding and squaring their territories.

The war with England, and the movements in the British House of Commons in the beginning of the summer of '82, finally induced the provinces, not only to make a treaty, but Mr. Adams was enabled, under those favourable auspices to negotiate a loan with certain merchants of Amsterdam, at first (in September 1782) for \* 5,000,000 guilders at 5 per cent. redeemable in ten years ;—2,000,000 at 4 per cent. in '85 ; and, again, 1,000,000 in 1787 at 5 per cent. The price of these loans was, probably higher than was paid by other nations ; but America did not enter into the market of Amsterdam with all the advantages of a well established government. When the first loan was contracted in September '82, very little doubt could exist but that America would be able ultimately to maintain her independence against the claims of the mother country. But this was not sufficient for the European money lender. It was necessary to satisfy him, that the confederacy of '74, whose pledge was his only security, would remain united, would not separate into thirteen independent governments, neither willing nor able to execute their engagements. The debts, contracted by the United States in Europe, during the revolution, were all honourably paid ; but the adoption of the constitution of '89, and the establishment of a treasury department, contributed in no small degree to this happy result.

\* In November 1781, the French king borrowed, for the United States, of the States General, 5,000,000 florins, at 4 per cent.

The pecuniary embarrassments under which the confederacy laboured, both as it respects the foreign and domestic debt, constituted, in reality, one of the principal arguments in favour of the present union of the States; and the Dutch as well as French creditor is much indebted to that change in the concerns of the country for the speedy and exact payment of his demands.

As the United Provinces were the second state to acknowledge the independence of this country, so they were the second to send a minister plenipotentiary to the Congress at Philadelphia. This was done with great promptitude. The person appointed was P. T. Van Berckel. He arrived in America in the autumn of '83, and in October of the same year was admitted, in the form prescribed, to a public audience. He addressed a speech to Congress on the occasion in the French language. A greater interest than common is justly attached to his sentiments, as there is some slight resemblance in the history of the Dutch and American revolutions.

## CHAPTER IV.

## TREATY OF 1783 WITH GREAT BRITAIN.

*Lord North attempts a Peace—America early conquered every thing she sought—Members of Parliament see Franklin privately—Ministry, as well as Opposition against acknowledgment of Independence—Lord Chatham speaks against it—Mediation of European courts—Unsuccessful—Adams' correspondence with Vergennes respecting official character—Austria and Russia not in favour of Independence—General Conway's resolution—Decides the question of War—New Ministry—Oswald and Grenville sent to Paris—Not officially—Failed—Lord Cholmondeley visits Franklin—Shelburne's Administration—Franklin's correspondence—Oswald instructed to acknowledge the Independence—Account of Negotiation from secret journals—Adams, Franklin, Jay, Laurens and Jefferson authorized to treat—Meet at Paris—Jay's firmness in declining to treat—Opposed to Vergennes and Franklin—Gets Oswald's commission altered—Difficulty as to loyalists—Make a compromise through violation of instructions—Anecdote of Jay—Conclude a Treaty—Boundaries—Fisheries—Agreed to Treaty without consulting France—Violation of Instructions—Explained—Michel's Map—France and Spain desirous of Fisheries and Western Country—De Rayneval's opinion of boundaries—Treaty honourable and favourable to America—Unpopular in England—Ministry in minority on first division—Necessary sacrifice.*

THE war, that led to the independence of the American colonies, began in 1775. The fatal celebrity, of having commenced hostilities, belongs to the administration, of which Lord North was first lord of the treasury, though the origin of the dispute may be traced to an earlier period in English history. For nearly four years, this administration had successfully withstood the accumulated disasters of the war abroad ; and at home, they had resisted with equal good for-

tune all the efforts of an opposition, as powerful by its talents, as any that had appeared since the days of Sir Robert Walpole. From November '74, to February '78, we find the ministry engaged in more than fifty angry, protracted debates, on topics directly connected with America; for no subject had, till that time, attracted so much of the attention of the British Parliament, or of the civilized world. But there is little variety in the course or progress, and none in the result of these different propositions. When we have read the debate on the memorable provisional act of Lord Chatham in the Lords, or the still more celebrated resolutions of Mr. Burke for conciliation with America, in the House of Commons, both made in the early part of the contest, we have little to learn either of the manner, in which motions were treated, or of the fate to which they were consigned. Thus matters stood till the beginning of the year '78. At that time an unfavourable change took place in American affairs, and in the tone of the British ministry;—Burgoyne had surrendered; and an alliance was formed with France;—one other act, the capture of Cornwallis, completed, as far as England was concerned, the Revolution. The administration at this period made a decided effort for peace, and, in that point of view, an account of the business properly belongs to this work. In the month of February of the same year, Lord North, as unexpectedly to his friends as his enemies, suddenly developed a plan, fully matured, of abandoning the principles upon which he had hitherto conducted the affairs of the colonies in North America. In introducing what were called his "conciliatory propositions" into the House of Commons, he declared it to be the intention of government to send a commission to America, to treat with the Congress, to grant pardons and immunities, to restore to the colonies their ancient charters, to exempt them from taxation, and not to require them to renounce their independence, till the treaty had been ratified by the king and parliament.—A writer of the day observes :

"A dull, melancholy silence succeeded to the speech, made by Lord North on this occasion. It had been heard with profound

attention, but without a single mark of approbation to any part from any description of men, or any particular man in the house. Astonishment, dejection and fear overclouded the whole assembly. Although the minister had declared that the sentiments he expressed that day, had been those which he always entertained, it is certain that few or none had understood him in that manner; and he had been represented to the nation at large as the person in it the most tenacious of those parliamentary rights, which he now proposed to resign, and the most remote from the submissions, which he now proposed to make."

Mr. Fox, who followed Lord North in the debate, congratulated the public on the conversion of the minister, and his own party on having gained so powerful an auxiliary. These terms, in fact, contained all the stipulations the first Congress, assembled in Philadelphia in 1774, proposed to accomplish. Thus America had, in reality, conquered at this early day every thing for which she originally took up arms. The declaration of Congress of July 4th, '76 constituted no part of the original requisitions or grievances of this country, for the war, in the outset, was certainly not undertaken for independence.

It appears, also, that propositions were made about this time to Dr. Franklin, the American commissioner, by Mr. William Pultney, a member of parliament, who saw him at Paris, under the assumed name of Williams. The terms did not differ from those, with which Lord North proposed to invest the British commissioners. Another member of parliament, a Mr. Chapman, had a conversation with Dr. Franklin on the same subject. This gentleman was at great pains to collect information touching a peace; and he made such proposals, in relation to independence and commercial privileges, as were then fashionable in England. The American commissioners in Europe, at that period, had no power to treat with Great Britain; but Dr. Franklin informed Mr. Pultney, that, in his opinion, America would not make a peace, in which her independence was not formally recognized.

England was anxious to separate the colonies from France,

and to re-establish her dominion over them ; but there were few people in that country in 1778, disposed entirely to resign the control of their ancient possessions. The ministry resolved never to acknowledge the celebrated act of the American Congress of July '76 ; from every other opinion and resolution they had been gradually driven by the goadings of the opposition, and calamities of every description in the course of the war. Peace the Americans could have had at any moment after '78 ;—every grievance would have been redressed ;—the mother country required no other condition from the colonies, than that they should subject themselves to the navigation act, or should enter into such commercial arrangements, as would have given to the trade of Great Britain superior advantages to that of other nations. The power of parliament was decreed absolute and unlimited, but the government was willing to consign, in a treaty, limitations and exceptions to it in favour of America. But, on the other hand, the declaration of independence added a new feature to the war ; compressed the dispute within narrow limits, and reduced it to a very simple proposition. The intricate questions of taxation and representation, of internal and external taxation, of regulating commerce and of raising revenue, of admitting the prerogative of the crown, but denying the supremacy of parliament, questions somewhat metaphysical and not always perfectly distinct in their application, were absorbed by the vast stipulation of independence. This was the only basis on which America, at the period when the commission was appointed, would treat for peace. But the mother country was not yet prepared for that concession, nor did the ministry exist, that would have had the courage to have submitted to that act of humiliation. Lord Chatham, himself, declared in debate, in December '77, that he was an avowed enemy to American independence ;—he contended for a whig connexion between the two countries, “ founded in a constitutional dependence and subordination.” To this opinion, generally entertained by many leading members of the opposition, Lord Chatham as often alluded in his later speeches on the American ques-

tion, as he had done to the supremacy of parliament in his earlier ones :

" My Lords," he said in his last speech, on the 7th April '78, " I rejoice that the grave has not closed upon me, that I am still alive to lift up my voice against the dismemberment of this ancient and most noble monarchy. Pressed down as I am by the hand of infirmity, I am little able to assist my country in this most perilous conjuncture ; but, my lords, while I have sense and memory, I will never consent to deprive the royal offspring of the house of Brunswick, the heirs of the Princess Sophia, of their fairest inheritance. Where is the man, that will dare to advise such a measure. My lord, his majesty succeeded to an empire as great in extent, as its reputation was unsullied. Shall we tarnish the lustre of this nation by an ignominious surrender of its rights and fairest possessions ? Shall this great kingdom, that has survived, whole and entire, the Danish depredations, the Scottish inroads, and the Norman conquest, that has stood the threatened invasion of the Spanish armada, now fall prostrate before the house of Bourbon ? Surely, my lords, this nation is no longer what it was ! Shall such a people, that, seventeen years ago, was the terror of the world, now stoop so low as to tell its ancient inveterate enemy,—take all we have, only give us peace ? It is impossible."

Indeed, a motion made in the House of Commons by Mr. Powys, in April '78, to authorize the commissioners, employed to treat with America, to declare the independence of that country, though supported by Mr. Fox and Mr. Burke, seems to have been generally discountenanced, and was finally rejected without a division. Commissioners were, however, appointed under Lord North's act, who proceeded to America, but the Congress refused to treat with them.

This is the first and only attempt, of which any traces now remain, made by Lord North's administration for a cessation of hostilities. They held to the terms, proposed in the commission of February '78, with a zeal and resolution, that finally proved fatal to them. Some interest may be attached to the first sincere endeavour of the mother country to conclude a peace with the United States ; an effort, it is true, not accompanied with the least success, nor can it in



any way be connected with the treaty of '83 ; but it belongs to the diplomatic history of the period, and is worthy of attention as illustrating the decided progress the "rebellion in the Massachusetts," as the first lord of the treasury was in the habit of calling it, had already made in the course of four years. It will not escape observation, that these terms, if embraced, substantially amounted to independence, or very speedily must have resulted in that state of things.

In 1781 a proposition was made by the imperial courts of Russia and Austria, to arrange in a Congress, under their mediation, the terms of a general peace. This business occupied the attention of the European courts during several months. France, never satisfied with the manner in which America, on her part, conducted the war, probably disappointed in the advantages she expected to reap from the contest, and already embarrassed to a great degree in her own finances, was anxious in the extreme for peace, and took great pains to render the mediation effectual. Though, separate from the determination of the English government, not to bring the affair of her colonies before a European Congress, (a process attempted in our time with equal ill success in reference to another part of the American continent) insuperable difficulties arose in relation to the terms that should serve as the basis of the mediation, and the manner in which the representatives of America should appear. We shall not extract the articles of mediation offered by the imperial courts, as they merely propose in the usual form to guaranty a general pacification ; but the terms were obviously inadmissible, as the independence of the United States was not made the basis of the mediation. Austria and Russia were not much disposed to acknowledge at that time the independence.—An extract of a letter from the Marquis de Verac, French Minister at St. Petersburg, to Mr. Dana, American Commissioner, who had consulted him on the propriety of making known the credentials, with which he was intrusted for that court, will leave little doubt on that head. The date of the letter is September 1781 :

"The mediating courts understand by this (the articles) that

your deputies shall treat singly with the English ministers, as they have already treated in America with the commissioners in 1778. That the conclusion of their negotiation shall teach the other powers, upon what footing they are to be regarded, and that their public character shall be acknowledged without difficulty *from the moment when the English, themselves, shall no longer oppose it.* It is the design of the mediating powers to avoid committing themselves, by acknowledging the independence of the United States, till England herself shall have pronounced such an acknowledgment."

It will not be necessary to follow Lord North's administration through the various debates, that took place from the time of his conciliatory bills to the fatal resolution moved in February '82, by General Conway. During that interval the revolution made no progress in Parliament; the opposition did not gain a man from the ministry for three years; on the contrary, they appear to have been convinced, that the question of peace or war, however much discussed in Parliament, was not there to be decided. America, itself, was the scene of action; and the event proved that, in that country, the time and terms of the treaty were to be dictated. Either the death of Lord Chatham had chilled and enfeebled the ardour and strength of opposition, or the indignation of the nation was roused at the alliance of the United States with their ancient enemy. It was said by a person, who interested himself infinitely in the concerns of America at that time, "that England would fight for a straw to the last man and the last shilling, rather than be dictated to by France;"—a declaration any person will readily believe, at all acquainted with the history of that country. One party, perhaps, was desperate and indifferent, and the other exhausted and disgusted. At least, it is certain that, till the capture of Lord Cornwallis, less interest had been manifested for the affairs and fate of the colonies from the winter of '79 to that of '82 than in the preceding years.

We shall now recite, with some detail, the circumstances that immediately preceded and attended the celebrated peace, by which the independence of this country was

acknowledged. This is the first effort, recorded in history, of a proud and powerful government to meet, in negotiation, revolted and aspiring colonies. And we may add, the first instance where a parent state has proposed and consented to arrange, in a solemn instrument, even after a bloody contest, the terms of a solid and sincere reparation—to create, by the simple process of a treaty, made in the usual forms, another great and independent nation;—an event probably as unexpected to the European courts, as was the discovery of the continent, where that nation was founded, and from which it took its name. A new state was added to the civilized family of mankind with a government organized and administered upon a plan, unknown and undreamt of either in history or speculation, the model and the original of those civil and political institutions, now covering the vast continent of North and South America.

Very little change had taken place in the composition of the ministry since the commencement of hostilities; but towards the close of the war, a diversity of opinion existed on the subject of independence. Lord North was probably satisfied that it could not be withheld; his speeches betray the unsettled state of his mind—the agony of a minister struggling to disguise or repress opinions, it was both his duty and his desire not to entertain or express, but which were rapidly forcing themselves upon his conviction. On the other hand, Lord George Germaine declared, in the very last debate, that, sooner than acknowledge the independence, he would retire from the ministry. And Mr. Dundas went even so far as to say, that the person, who should propose an avowal of it, would be guilty of a crime little short of high treason. No peace could be expected from this administration. They maintained their places upon the simple tenure of not subscribing to the single condition on which a peace could be made; and while a prospect remained of regaining the colonies, the great majorities, with which the ministry began the war, remained faithful to them. The 22d February 1782, General Conway made a first motion in the Commons for putting an end to the American war. This

motion, after a debate that lasted till two o'clock in the morning, was lost by the majority of a single vote, 193 to 194 ; but as the question had been decided by so slight a majority, Mr. Fox immediately gave notice, that the motion would be shortly renewed. Accordingly, on the 27th of the same month, a motion similar in substance was made by the same member, and at a very late hour this resolution was adopted by a vote of 234 to 215, leaving ministers in a minority of nineteen.—The administration had suffered itself to be conquered in America ; but the triumph of its adversaries at home was a tardy and faint one. The House of Commons relinquished the contest with evident reluctance. Indeed, we shall shortly see, that these votes did not at all indicate the feelings of that body on the subject of independence, and that a portion of the members still believed, the colonies would be reannexed to the empire. Lord North was abandoned, because it was out of the question to continue the war ; but this did not necessarily lead, in the minds of all, to the further immediate consequence—the acknowledgment of independence. The next Cabinet, even formed as it was on the ruins of the war ministry, refused to recognise the act of July '76 ; it was dissolved partly on account of this circumstance, and partly on account of the death of the Marquis of Rockingham. Mr. Fox, one of the Secretaries of State, withdrew when it was ascertained that a principal condition on which it had been composed, the independence of America, was disavowed by a majority of the Cabinet. It would not be, therefore, quite correct to say, that the vote of February 27th, though it settled, as far as England was concerned, the question of war, decided, in the same view, that of independence.

Towards the end of March '82, the new administration was formed, and was called the Rockingham, from the name of the nobleman at the head of it. Mr. Fox and Lord Shelburne were the principal Secretaries of State. Lord Cholmondely, a young English nobleman returning home through France from Italy, about this time, paid a visit, probably at the suggestion of individuals in power in England,

to Dr. Franklin, who, on the representations made by him, took that opportunity to write a private letter to the nobleman at the head of the foreign department, with whom he had formerly been acquainted.

"Lord Cholmondely having kindly offered to take a letter from me to your Lordship, I embrace the opportunity of assuring the continuance of my ancient respect for your talents and virtues; and of congratulating you on the returning good disposition of your country in favour of America, which appears in the late resolutions of the Commons. I am persuaded it will have good effects. I hope it will tend to produce a *general peace*, which I am sure your Lordship, with all good men, desires, which I wish to see before I die, and to which I shall with infinite pleasure contribute every thing in my power. Your friends, the Abbé Morellet and Madam Helvetius are well. You have made the latter very happy by your present of gooseberry bushes, which arrived in five days in excellent order."

"LONDON, 6 April 1782.

"I have been favoured with your letter, and am much obliged by your remembrance. I find myself returned nearly to the same situation, which you remember me to have occupied nineteen years ago, and should be very glad to talk to you as I did then, and afterwards in 1767, upon the means of promoting the happiness of mankind, a subject much more agreeable to my nature than the best concerted plans for spreading misery and destruction. I have had a high opinion of the compass of your mind and of your foresight. I have often been beholden to both, and shall be glad to be so again, as far as it is compatible with your situation. Your letter, discovering the same disposition, has made me send to you Mr. Oswald. I have had a longer acquaintance with him, than even I have had the pleasure to have with you. I believe him an honest man, and, after consulting some of our common friends, I have thought him the fittest for the purpose. He is a practical man and conversant in those negotiations, which are most interesting to mankind. This has made me prefer him to any of our speculative friends, or to any person of higher rank. He is fully apprized of my mind, and you may give full credit to every thing he assures you of. At the same time, if any other channel occurs to you, I am ready to embrace it. I wish to retain the same simplicity and

good faith which subsisted between us in transactions of less importance.

"SHELBURNE."

In the beginning of April, Mr. Oswald met Dr. Franklin in Paris, then the only commissioner there, in a character partly official, but principally for the purpose of obtaining information. He was not authorized to propose terms of peace, though he intimated that the independence of the colonies would be agreed to. We find, however, this suggestion clogged with a condition, that England should be placed by France in the state of 1763. Mr. Oswald made one or two journeys between Paris and London, but nothing was accomplished. In April Mr. Grenville was sent by Mr. Fox to Paris. When he first arrived, it was supposed he was to engage in a negotiation for a general peace. He had various conversations with Dr. Franklin and M. de Vergennes; but, when his powers were produced, they were full in regard to France, but contained no mention of the allies. He said, his power was a copy of an official form in the office, and that America was doubtless omitted by accident. He informed M. de Vergennes, that his instructions from Mr. Fox directed him to acknowledge the independence, previous to the commencement of a treaty, but when desired to put this declaration in writing, he wrote, "*the king was disposed.*"

The British ministry, though soon dissolved by the death of the Marquis of Rockingham, were early distracted by a want of unanimity, and early lost the confidence of the people. The negotiation with America during May and June made no progress;—Mr. Oswald was the agent of Lord Shelburne, known to be opposed to the acknowledgment, and Mr. Grenville, of Mr. Fox. This ministry had been forced upon the king by a vote of the House of Commons. The hopes of regaining America were again excited by the decisive victory of Lord Rodney in the West Indies, and the unexpected successes of Sir Eyre Coote against Hyder Ali in the East; and, if credit may be given to the reports

of the day, the government looked forward with some confidence to the making a separate peace with Congress by means of Sir Guy Carleton, who had been appointed to the command of the forces in North America. These circumstances combined to render this attempt at peace abortive. The American commissioners were at this time entirely in despair. Mr. Adams, writing from the Hague, June 13, '82, observes, "I cannot see a probability that the English will ever make peace, until their finances are ruined, and such distress brought upon them, as will work up their parties into a civil war."

The reader will, perhaps, feel some interest in having a version put into his hands by the French Court of the state of the negotiation in the summer of '82, though he may well entertain some doubt of the full justice of the intimations in regard to Lord Shelburne.

"Dec. 30, 1782. The Minister of France came this day, agreeable to appointment, to the office for foreign affairs, and read to Mr. Livingston a letter from the Count de Vergennes to him, dated the 12th of August last, which contained in substance—That the negotiation began by Mr. Grenville and Mr. Oswald were interrupted by the resignation of Mr. Fox. That previous to that, the King of England appeared disposed to acknowledge the independence of America in express terms, without making it a condition of the peace. That Mr. Grenville encouraged them to hope, that this object would be rendered complete by an act of Parliament. That they looked in vain for this act till they were apprized of the resignation of Mr. Fox. That the differences, which arose between him and Lord Shelburne, led them to suppose that the design of the first was to recognise the independence of America, and treat for a general peace upon fair and honourable terms. That Lord Shelburne's was, on the contrary, to endeavour to excite distrust, and, particularly, to endeavour to mislead the Americans. That in pursuance of this system in the month of June last, at the very time that they opened the treaty in Europe, he proposed to offer the most advantageous terms to America upon condition, that the Americans laid down their arms and left France to settle the dispute alone. This insidious conduct was pursued during Mr. Grenville's



negotiation. That Mr. Fox's resignation suspended the negotiation, though the new administration declared that this event should occasion no change of measures. That the Court of France expected the effect of this declaration, when a commission was expedited to Mr. Oswald to treat with the American Plenipotentiaries, and another to authorize Mr. Fitzherbert to resume the negotiation, begun by Mr. Grenville. That he had presented his credentials the 4th instant. That Mr. Oswald had yet received only a copy of his, owing to the Chancellor's absence. That Mr. Fitzherbert had returned the answer of Great Britain to the counter proposition given by France. That this contains full evidence of the understanding of Lord Shelburne's conduct, since, instead of making the independence of America a separate object, it proposes it as a condition and as the price of peace, and adds, that every other circumstance should be placed upon the basis of 1763. He observes, that the Chevalier de la Luzerne will judge from this, that they affected much surprise at the counter propositions, and that they did not assent to them.—Neither on the other hand, have they yet refused them, but confine themselves to demanding explanations. That this was the then state of their negotiations. That Mr. Oswald had presented his commission, to which Mr. Franklin and Mr. Jay had yet given no reply, suspending it till they knew his (the Count de Vergennes) sentiments. That as yet he had formed no opinion, waiting the result of a conference, which he was to have the next day with those Ministers. That the commission was in the usual form, but speaks of the Americans as colonies, without naming them as rebels, or asserting any claims upon them. That he did not, for his part, believe that Lord Shelburne would negotiate a general peace sincerely, till he loses all hopes of sowing dissensions and treating separately. That they were convinced, that neither France or Spain were to be deceived, and that he (the Count de Vergennes) entertained the same sentiments with respect to the Americans. But that the British Ministry, deceiving themselves, may continue to tempt them till a peace is signed."—"He then proceeds to inform the Minister, that while the British had set on foot a direct negotiation, the Imperial Court renewed their instances with that of London to engage them to accept their mediation. That this gave birth to an answer, in which his Britannic Majesty, without taking notice of the negotia-

tion begun at Paris, declared that he was ready to receive through them every pacific overture, and even to admit the Dutch and the Americans to the negotiations. This answer was dated the 29th April, when Mr. Oswald was already in Paris. That they continued their negotiations and sent Mr. Grenville powers, which were dated the 21 May. That they did not conceal this from the Imperial Courts, but pretended that it was at the instance of France. That this false accusation, and, above all, the fear of seeing the mediation vanish, had engaged the Imperial Courts to communicate to the Courts of Versailles and Madrid, the last memorial of the Court of London, and to exhort them to establish a negotiation under their auspices. That it was easy to refute the unskillful accusation of the British, which he (the Count de Vergennes) thinks they (the Court of France) have done with success. That the answer is transmitted. That they had determined, without rejecting the mediation, to pursue the direct negotiation as long as it might be convenient to the Court of London. That he had not seen the answer of the British, which could not, however, be very satisfactory, since they have expedited the commission to Mr. Fitzherbert and Mr. Oswald. That he (the Count de Vergennes) was ignorant of the part, that the Imperial Courts would take up on their declinatory answer."

It was not till September of the same year, under Lord Shelburne's administration, formed upon a dissolution of the Rockingham, that the British government took a decisive and sincere step to make peace, and authorized their commissioner, Mr. Oswald, at Paris, to acknowledge the independence of the colonies. The following are the words of this instruction :

"In case you find the American commissioners are not at liberty to treat on any terms short of independence, you are to declare to them, that you have authority to make that concession. Our ardent wish for peace disposing us to purchase it at the price of conceding the complete independence of the thirteen colonies, viz. : New-Hampshire, Massachusetts Bay, Rhode-Island, Connecticut, New-York, New-Jersey, Pennsylvania, the three lower counties in Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia in North America."

We have hitherto confined this relation entirely to the

proceedings of the British government; for it always depended upon England to make peace; America could not be desirous of continuing the war; but she had declared her independence, and was able to maintain it. There were, therefore, only two conditions upon which she could consent to a cessation of hostilities; either that the king's fleets and armies should be withdrawn, or the independence recognised. As early as August '79, Congress prepared a draught of instructions, and, in September following, appointed John Adams, of Massachusetts, a commissioner to make a treaty of peace, with subsequent instructions to conclude one of commerce with Great Britain. The commissioner was particularly directed to make it, "a preliminary article to every negotiation, that Great Britain shall agree to treat with the United States as sovereign, free and independent." Mr. Adams went without delay to Europe, being subsequently appointed to the Hague.\* But he was not authorized to

\* Mr. Adams, after his arrival in Paris, had some correspondence with M. de Vergennes, concerning the propriety of making his official character public. We give two of the letters.

"Paris Hotel De Vallois Rue Richelieu, Feb. 12, 1780.

"*To His Excellency the Count De Vergennes :*

"Having obtained permission from your excellency yesterday, when I did myself the honor to wait on you at Versailles, to write on the subject of my misfortune, I have now the honour to acquaint you, that on the twenty-ninth day of September last the Congress of the United States of America did me the honour to elect me their Minister Plenipotentiary to negotiate a peace with Great Britain, and, also, to negotiate a treaty of commerce with that kingdom, and the Honourable Francis Dana, Esq. a member of Congress and of the Council of Massachusetts Bay, Secretary to both Commissions. As I was not at Congress, when this transaction took place, I am not able to inform your excellency very particularly of the rise and progress of it. But from conversation with gentlemen at Boston, who were members of Congress, and from private letters, I learnt that it was not the result of any sudden deliberation, or the fruit of any particular event of war, prosperous or adverse, but a measure that had been more than a year under consideration, and finally agreed upon this principle, that as it was uncertain at what time the belligerent powers might be disposed to treat of peace, which could not be concluded without a Min-

make propositions to the court of St. James, and there is no ground for believing that America, at any time, during the war, and after the act of July '76, made any attempt at

ister from the United States, it would save a great deal of time for this power to have a Minister in Europe fully authorized to treat, and in concert with Ministers from the other powers at war, conclude a peace with Great Britain and a treaty of commerce, consistent with that already made with his most Christian Majesty, and such others, as might be made with other powers. I am persuaded, it is the intention of my constituents, and of all America, and I am sure it is my own determination, to take no step of consequence in pursuance of my commissions without consulting his Majesty's Ministers, and as various conjectures have been, and may be made, concerning the nature of my appointment and powers, and as it may be expected by some, that I should take some measures for announcing these to the public, or, at least, to the Court of London, I beg the favour of your excellency's opinion and advice upon these questions.

"1. Whether in the present circumstances of things, it is prudent in me to acquaint the British Ministry, that I have arrived here, and have such commissions, and that I shall be ready to treat, whenever the belligerent powers shall be inclined to treat.

"2. Whether it is prudent in me to publish in any manner more than the journals of Congress may have already done, the nature of my commission.

"3. Or whether to remain on the reserve, as I hitherto have done, since my arrival in Europe.

"If any propositions should be made to me, directly or indirectly from the British Ministry, I shall not fail to communicate them, without loss of time, to your excellency, and I beg the favour of your excellency, as I am the only person in Europe, who has authority to treat of peace, that if any propositions on the part of Great Britain should be made to his Majesty's Ministers, that they may be communicated to me, at least, as far as they may relate to the interest of the United States. Although I am not confined by my commissions nor instructions, nor by any intimations from Congress to reside in one place in Europe more than another, yet my own inclination, as well as those of the public, would be most gratified, and the public service most promoted by my residing here. I must, therefore, request his Majesty's protection and permission to reside in this kingdom for some time, with or without assuming any public character, as your excellency may think most advisable.

"JOHN ADAMS."

negotiation, either directly or by means of her allies. At the period of the interviews of Mr. Pultney with Dr. Franklin at Paris, Congress had neither appointed a commissioner nor prepared instructions. We have not been able, in the secret journals of Congress, to discover the slightest intimation of a desire to abandon the ground of the instructions of August '79.\* America at all times rejected with great

“VERSAILLES, Feb. 24, 1780.

“I have received, Sir, the letter which you have done me the honour to write me the 19th of this month. Your full powers, of which you have been pleased to send me a copy, are perfectly conformable to what M. Gerard has written me about them, and they leave us nothing to wish for as to the form or matter. I think there will be some unfitness in informing the public of the principal object of your mission. I mean the future pacification. It will, even, be announced in the Gazette of France, when it will mention your presentation to the king and royal family, and you will be at liberty to give your eventual character a greater publicity, by having it published in the Dutch papers. I could only wish, that you would be so kind as to communicate the article to me, before you transmit it. With regard to the full powers, which authorize you to negotiate a treaty of commerce with the Court of London, I think it will be prudent not to communicate them to any body whatever, and to take every necessary precaution, that the British may not have a premature knowledge of them. You will no doubt easily feel the motives, which induces me to advise you to take this precaution, and it would be needless to expose them.

“With regard to your instructions, Sir, I am certain they have for their certain and invariable basis the treaties subsisting between the King and the United States. M. Gerard has assured the King of it in the most positive manner, and his Majesty does more justice to the uprightness of Congress and to the stability of the sentiments, which they have hitherto manifested, than to have entertained or ever to entertain the least doubt on this subject. This way of thinking will convince you, Sir, that we have no need of seeing your instructions, to appreciate properly the principles and dispositions of Congress towards Great Britain.

“DE VERGENNES.”

\* In July '79 the French Minister urged to Congress the necessity or rather expediency of making peace without a formal acknowledgment of the independence. And June 9, 1781, Congress adopted a

emphasis even the project of a short truce. This was considered highly dangerous to the liberties of the country, though a favourite notion with many of her best friends in England. In the instructions of October '80, and of June '81, the same direction is inserted in relation to the acknowledgment. The commission, under which the preliminaries of the treaty were actually concluded, was issued by Congress in June '81.

It empowered "John Adams, Benjamin Franklin, John Jay, Henry Laurens, and Thomas Jefferson, or the majority of them, or such of them as may assemble, or in case of the death, absence, indisposition, or other impediment of the others, to any one of them, full power and authority, general and special commission to repair to such place, as may be fixed upon for opening the negotiations for peace, and there for us, and in our name, to confer, treat, agree and conclude with the ambassadors, commissioners and plenipotentiaries of the princes and states, whom it may concern, vested with equal powers, relating to the establishment of peace, and whatsoever shall be agreed and concluded for us, and in our name, to sign, and thereupon make a treaty or treaties, and to transact every thing that may be necessary for completing, securing and strengthening the great work of pacification, in as ample form, and with the same effect, as if we were personally present and acted therein."

All the commissioners, except Mr. Jefferson, were present during some part of the discussions, being in Europe at the time the meeting was appointed.\* Mr. Jefferson was in America, and did not leave it, as a report reached the government that the preliminaries were already signed. Mr. Oswald's commission in proper form, from which an extract was given on a preceding page, was not issued till the 21st of September. Some delay had taken place in consequence of objections made by one of the American commissioners

resolution, (with only three votes) authorizing the Commissioners to make a peace without a formal recognition; but, as we have said in the text, Congress never departed from the ground of treating as sovereign and independent states.

\* Mr. Adams did not arrive at Paris till October 26, '82. Mr. Jay says, "I found him a very able and agreeable coadjutor."

to the style, by which the United States were designated. The true and proper appellation of this country was omitted, the denomination of "colonies" being employed. But the American envoy refused to proceed in the business until a commission, giving to the United States their public and diplomatic name, was sent to Mr. Oswald. This appellation was the thirteen United States of America.

The French minister appeared to attach less importance to a formal recognition, in which opinion Dr. Franklin participated, than the American commissioner. M. de Vergennes considered the first commission of Mr. Oswald sufficient; he did not think it necessary America should insist on a formal acknowledgment. We have intimations of this disposition as early as July '79, in the communication of M. Gerard, the French minister to Congress. Indeed, the unpopularity of that gentleman in this country was supposed to be owing to the steps he took to induce Congress to renounce the idea of a formal recognition, together with the right of the fisheries, and the boundaries of the Mississippi.

Mr. Jay, who had arrived in Paris in June 1782, from Madrid,\* and who conducted the negotiation with uncommon spirit and ability, till he was joined by Mr. Adams, resisted immediately, and with remarkable firmness, all proposals to treat on the terms, recommended by M. de Vergennes, and, in some degree, countenanced by Dr. Franklin. This country is much indebted to the resolution and independence, displayed by Mr. Jay on that topic, as well as on one of hardly less importance, that occurred on a subsequent occasion, though it is obvious, that gentleman, as well as Mr. Adams, assumed the great responsibility of deviating from the direct, manifest instructions of Congress.

"August 10, 1782. I waited this morning on Vergennes, and a conference ensued between us on the subject of Mr. Oswald's commission. The Count said, it was such a one, as we might have

\* Extract of a letter from Mr. Jay, June 25, '82.—"Dr. Franklin is in perfect health, and his mind appears more vigorous than that of any man of his age I have ever known. He is certainly a valuable minister, and an agreeable companion."



expected it would have been, but that we must take care to insert proper articles in the treaty, to secure our independence and our limits against all future claims. I objected to the Count, it would be descending from the ground of independence, to treat under the name of colonies. He replied, names signify nothing. The king of Great Britain styling himself king of France, was no obstacle to the king of France's treating with him:—that an acknowledgment of independence, instead of preceding, must, in the natural course of things, be the effect of the treaty. The Count turned to Dr. Franklin, and asked him, what he thought of the matter; he said, he believed the commission would do. He next asked my opinion. I told him I did not like it. On returning, I could not forbear observing to the Doctor, it was evident the Count did not wish to see our independence acknowledged by Great Britain, till they had made all their use of it. It was easy for them to foresee difficulties in bringing Spain into a peace on moderate terms; and that, if we once found ourselves standing on our legs, our independence acknowledged, and our other terms ready to be granted, we might not think it our duty to continue the war for the attainment of Spanish objects; but as we were bound to continue the war till our independence was attained, it was the intent of France to postpone that event. The Doctor imputed the conduct of the Minister to his moderation; and, as this Court has hitherto treated us fairly, we should not easily suspect them."

A letter of the same tenor was also transmitted to Mr. Oswald himself, and which Mr. Jay succeeded in persuading Dr. Franklin to sign:

"It is with regret we find ourselves obliged by duty to our country to object to entering with you into negotiations for peace on the plan proposed. Our nation can treat with another nation only on terms of equality; and it cannot be expected, that we should be the first and only persons, who would admit doubts of their independence. The tenor of your commission affords matter for a variety of objections, which your good sense will save us the pain of enumerating. The journals of Congress present to you unequivocal and uniform evidence of the sentiments and resolutions of Congress on the subject, and their positive instructions speak the same language. The manner of removing these obstacles is

obvious, and, in our opinion, no less consistent with the dignity than with the interest of Great Britain. If the Parliament meant to enable the king to conclude a treaty with us on terms of independence, they necessarily meant to enable him to do it in a manner compatible with his dignity, and, consequently, that he should previously regard us in a point of view, that would render it proper for him to negotiate with us.

"As to referring an acknowledgment of our independence to the first article of a treaty, permit us to remark, that this implies, that we are not to be considered in that light, till after the conclusion of the treaty; and our acquiescing would be to admit the propriety of our being considered in another light during that interval."

As America was the ally of France, it was not consistent with the dignity of that nation, she should treat on other terms than those of independence. We may also remark, that as every idea of conquest on the part of England was absurd, nothing remained for that country, but to make friends of those she could not subdue, and independence constituting the action of the peace, it was a fair ground for negotiation to consider that topic, in conformity with the notion of Lord Shelburne, a condition of the peace, for which an equivalent should be conceded by the United States. It was obviously the intent of France to postpone the acknowledgment till the conclusion of a general peace, for America, by the terms of the treaty with that country, could not withdraw from the war, till the independence was assured. Mr. Jay prepared a detailed and learned memorial (now to be found in his correspondence) on the propriety of having Mr. Oswald's instructions altered, which he was in the act of sending to M. de Vergennes, when a despatch was received from the British government, authorizing their envoy to treat with the United States as sovereign and independent.\*

There were two subjects, that created difficulty and great

\* The Marquis de la Fayette laboured with zeal and assiduity to reconcile the differences of opinion between Mr. Jay and M. de Vergennes. Vid. Correspondence.

irritation,—the fisheries, and compensation to the royalists and refugees. The American loyalists prolonged the war by the ill-founded accounts they gave the ministers respecting the state of parties in America. Indeed, if the British Cabinet had been less under the influence of those unfortunate individuals than of their own officers, the disastrous contest with the colonies would certainly have terminated at an earlier period. It is a remarkable fact that the principal military men, who returned from America, such as General Burgoyne, Lord Cornwallis, Sir Wm. Howe, and Sir Henry Clinton, expressed opinions unfavourable to a continuation of the war. Whether the loyalists had taken arms against the United States from an honourable attachment to the mother country, or from interested motives, could not, and ought not, to affect the question. In considering this subject, it is impossible to go back to the original proposition, whether the parent state or colonies first violated the social compact that held them together, because that is really the point, which led to the war and terminated in the independence. Neither does it signify that the war did not first begin on the part of the colonies for independence. Repeated and aggravated injustice fully warranted that last step, if the first measures of the people and of Congress could be justified. The loyalists had had the misfortune, or ill luck, to join a cause that had failed. Justice did not require that the victorious party should make them an indemnity. On the other hand, if the mother country had recovered the government of the colonies, the loyalists would have received an abundant reward, both of wealth and honours. All humane persons might have felt compassion for their deplorable condition; they were objects of pity; they had lost their country and their property. But at the conclusion of the revolution war, the American government was not in a condition to extend gratuitously bounties to foreigners, as at this time the loyalists had, unhappily for themselves, become. It could not pay even its own officers and soldiers, much less its numerous citizens, who had suffered such great losses by the desolations of the enemy. Again, a "constitutional"

difficulty presented itself. The estates of the loyalists had been confiscated by the acts of the States, and in numerous instances, had passed by the usual legal transfers into the hands of various individuals. Congress was not invested by the articles of the Union with any power over these local and domestic acts; it was a matter exclusively reserved to the internal polity of the States themselves. The British insisted with great earnestness, that full indemnity should be provided for the whole body of loyalists. They were at the pains of sending an under secretary of state, Mr. Strachey, to Paris, to urge this point. But he made no impression upon the American commissioners. The instruction of the government, issued October 18th, 1780, was precise and positive.

“That with respect to those persons, who have either abandoned or been banished from any of the United States, since the commencement of the war, he is to make no stipulations whatsoever for their readmittance; and, as to an equivalent for their property, he may attend to propositions on that subject only on a reciprocal stipulation that Great Britain will make full compensation for all the wanton destruction, which the subjects of that nation have committed on the property of the citizens of the United States.”

This obstacle delayed the negotiation; and, at one time, great apprehensions were felt, that the objection would be fatal. The ministry, some time after, in a debate on the provisional articles, declared, the business had come to such a pass, that the government had the alternative of continuing the war, or of abandoning the loyalists. While the articles of the provisional treaty were under discussion, Great Britain was still in possession of New-York, Charleston, Penobscot, Rhode-Island, Detroit, and the fisheries; and the surrender of these places and rights, was made a condition of compensation to her American subjects. This was a very troublesome demand; but at this difficult crisis, a compromise was effected, in itself, perhaps, little more than nominal, considering the relation of the confederation to the independent states, that composed it. This arrangement will be found in the fifth article of the treaty. The commissioners

were satisfied that a treaty was impracticable, without some stipulation respecting the loyalists, though the article is an undoubted departure from their instructions. Congress, however, ratified the whole instrument, by an unanimous vote.

The provisional treaty was signed at Paris, the 30th November 1782,—on the part of America, by Messrs. Franklin, Adams, Laurens and Jay,—and, on the part of Great Britain, by Mr. Richard Oswald, Lord Shelburne being still at the head of affairs in that country. The preliminary articles being ratified, within the time specified, by the respective governments, the *definitive* treaty of peace, substantially a copy of the *provisional* one, was signed,—for America, by Messrs. Franklin, Adams and Jay,—and for England, by Mr. David Hartley, at Paris, the 3d September 1783.\* “Passy,

\* “ART. 1. His Britannic Majesty acknowledges the said United States, viz. New-Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign and independent states; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same, and every part thereof.

“ART. 2. And that all disputes which might arise in future, on the subject of the boundaries of the said United States, may be prevented, it is hereby agreed and declared, that the following are and shall be their boundaries, viz:—from the north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of Saint Croix river to the highlands; along the said highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the north-westernmost head of Connecticut river; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois, or Cataraquy; thence along the middle of said river, into lake Ontario, through the middle of said lake, until it strikes the communication by water between that lake and lake Erie; thence along the middle of said communication into lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and lake Huron; thence along the middle of said water commu-

August 31, 1783.—After a continued course of treating for nine months, the English ministry have at length come to a resolution to lay aside, for the present, all the new pro-

nication into the lake Huron; thence through the middle of said lake to the water communication between that lake and lake Superior; thence through lake Superior, northward of the isles Royal and Philippeaux, to the Long Lake; thence through the middle of the said Long Lake, and the water communication between it and the lake of the Woods, to the said lake of the Woods; thence through the said lake to the most north-western point thereof,—and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the equator, to the middle of the river Apalachicola, or Catahouche; thence along the middle thereof to its junction with the Flint river; thence straight to the head of St. Mary's river; and thence down along the middle of St. Mary's river to the Atlantic ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth, in the bay of Fundy, to its source, and from its source, directly north, to the aforesaid highlands, which divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence: comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy, and the Atlantic ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

“ART. 3. It is agreed, that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind, on the Grand Bank, and on all the other banks of Newfoundland; also, in the gulf of St. Lawrence, and at all other places in the sea, where the inhabitants of both countries used, at any time heretofore, to fish; and also, that the inhabitants of the United States shall have liberty to take fish of every kind, on such part of the coast of Newfoundland as British fishermen shall use; (but not to dry or cure the same on that island;) and also on the coasts, bays and creeks, of all other of his Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled

positions that have been made and agreed to (their own as well as ours),—and they offer to sign, as a definitive treaty, the articles of November 30, '82. We have agreed to this,

bays, harbours and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose, with the inhabitants, proprietors, or possessors of the ground.

"ART. 4. It is agreed, that creditors on either side, shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all bona fide debts heretofore contracted.

"ART. 5. It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective states, to provide for the restitution of all estates, rights and properties, which have been confiscated, belonging to real British subjects, and also of the estates, rights and properties of persons resident in districts in the possession of his majesty's arms, and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights and properties, as may have been confiscated; and that Congress shall also earnestly recommend to the several states a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation, which, on the return of the blessings of peace, should universally prevail. And that Congress shall also earnestly recommend to the several states, that the estates, rights and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which such persons may have paid on purchasing any of the said lands, rights, or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

"ART. 6. That there shall be no future confiscations made, nor any prosecutions commenced against any person or persons for, or by reason of, the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or



and on Wednesday, the 3d of September, it will be signed with all the other definitive treaties, establishing a general peace, which may God long continue."\* This treaty was unanimously ratified by Congress, on the 14th of February 1784. And, on the same day, they unanimously issued a recommendation to the states in pursuance with the stipulations of the fifth article. Hostilities ceased, by proclamation, in April of the preceding year. The British minister refused to insert an article in the treaty, on the subject of commerce.

The boundary of the United States, established by this treaty was, with the exception of the north-west portion, pre-

damage, either in his person, liberty, or property, and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecution so commenced be discontinued.

"ART. 7. There shall be a firm and perpetual peace between his Britannic majesty and the said states, and between the subjects of the one and the citizens of the other, wherefore all hostilities both by sea and land shall then immediately cease: all prisoners on both sides shall be set at liberty, and his Britannic majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons and fleets from the said United States, and from every port, place and harbour within the same; leaving in all fortifications the American artillery that may be therein; and shall also order and cause all archives, records, deeds and papers, belonging to any of the said states, or their citizens, which in the course of the war may have fallen into the hands of his officers, to be forthwith restored and delivered to the proper states and persons to whom they belong.

"ART. 8. The navigation of the river Mississippi, from its source to the ocean, shall for ever remain free and open to the subjects of Great Britain, and the citizens of the United States.

"ART. 9. In case it should so happen, that any place or territory, belonging to Great Britain, or to the United States, should have been conquered by the arms of either, from the other, before the arrival of the said provisional articles in America,—it is agreed, that the same shall be restored without difficulty, and without requiring any compensation."

\* Franklin's Secret Correspondence.

cisely in conformity with the instructions of Congress of August '79. America succeeded to the territorial rights of the British king, a principle distinctly and publicly announced, and of infinite value in subsequent negotiations with Spain. The original instructions would have deprived this country of the use of lake Superior, whereas the treaty boundary included the navigation of all the lakes. A greater extent of territory, also, fell into our hands. The English were desirous of holding all the territory described by the Quebec bill. Canada, by that instrument, was bounded south by the Ohio, and thence, due west to the Mississippi. This boundary, of course, included all the lakes, the present states of Ohio, Indiana and Illinois, and the territory of Michigan, and of the north-west. The Quebec bill was one of the grievances of which the colonies complained, and is alluded to in the declaration of independence. But this proposition was at once rejected. The British commissioner stipulated, with great care for the free navigation of the Mississippi. A very wrong estimate appears to have been formed, by his government, of the value of this privilege. The English fur companies held hunting grounds about its source; but its mouth was, at that time, in the possession of Spain,—and, from the 45th degree to the Gulf of Mexico, England did not own a foot hold upon its banks. The navigation could have been valuable, only on the expectation of coming again into possession of West Florida; though, by treaty, it still remained in the hands of Spain. The English government seemed to have had hopes of this acquisition; as a separate article, *never communicated to France*, was introduced into the *provisional* treaty, to meet that change of territorial right. But, according to appearances, in '82, the British might as well have stipulated for a right to navigate the Rhine, or Rhone. The geography, about the sources of the Mississippi, was little understood in those days; and the arrangement, on this head, was made in the dark by both parties. It is now ascertained, that the British boundaries of '83 did not touch that river. They would, therefore, have had a right to have gone through the territories of the Unit-

ed States, for the stipulation of navigation was an unconditional one. One remark naturally forces itself upon us at this time. England and America divided, in this treaty, a great extent of territory, which, to say the least, was entirely unknown to both, and was inhabited by tribes of savages, certainly uncivilized, but independent, and who had never fallen under the dominion of either party. America preserved her original right in the fisheries, and such territorial rights as belonged by charter to the colonies. The northwest boundary was a matter of great embarrassment; but it is obvious, at once, that the proposition to bring the British boundary down to the Ohio, and to settle the loyalists in the Illinois, would have led to serious and immediate difficulties.

We are not aware, that the right of any nation to the fisheries was formally recognised, till the treaty of Utrecht, in 1713. The 13th article ceded Newfoundland, with the adjacent islands, to Great Britain; Cape Breton, with the other islands situated in the mouth and in the gulf of St. Lawrence, together with the right of taking and curing fish on the coasts of Newfoundland, from Cape Bonavista, on the eastern side, to the northern extremity of the island, and thence down the west coast to Point le Riche, were reserved to France. The treaty of Paris, of 1763, made some alterations in this arrangement; though Newfoundland, itself, remained as under the original stipulation. But the French were restricted from fishing in the gulf of St. Lawrence, within three leagues of the British coasts, and fifteen of Cape Breton. They retained the small islands of St. Pierre and Miquelon, with the right of keeping a military post on them. Spain, by the 18th article of the same treaty, renounced, in favour of Great Britain, her right of fishing in the neighbourhood of Newfoundland. It, therefore, happened, when the revolution war began, that the most valuable fishing grounds and privileges were in the possession of England, and of her subjects in North America.

Under the different charters defining the powers and extent of the New-England colonies, or provinces, persons, born in any of these governments, were declared to have all

the rights and privileges of natural born subjects. A right of fishing on the coasts was particularly specified; as well as to build all necessary stages, in places not occupied, for drying and curing fish.

"It was their birthright, as British subjects; it was their special right, as secured to them by charter; and the British Parliament, itself, could deprive them of it, as they did, only by one of those acts which provoked and justified the declaration of independence. In March '75, Parliament passed 'an act to restrain the trade and commerce of the provinces of Massachusetts Bay, and New-Hampshire, and colonies of Connecticut and Rhode Island, and Providence plantation, in North America, to Great Britain, Ireland, and the British islands in the West Indies; and to prohibit such provinces and colonies from carrying on any fishery on the Banks of Newfoundland, and other places therein mentioned, under certain conditions and limitations.' In moving for leave to bring in this bill, Lord North 'supported his motion by declaring that, as the Americans had refused to trade with this kingdom, it was but just that we should not suffer them to trade with any other nation. In particular, he said, that the fishery on the Banks of Newfoundland, and the other banks, and all the others in America, was the undoubted right of Great Britain; therefore we might dispose of them as we pleased. That, although the two houses had not declared all Massachusetts Bay in rebellion, they had declared, that there is a rebellion in that province. It was just, therefore, to deprive that province of its fisheries.'

"In the debates upon this bill, all the abilities and all the eloquence of both parties, in the British Parliament, were called forth. On this bill, Mr. Charles Fox said, 'that the bill must have been calculated to put an end to all that remained of the legislative authority of Great Britain over America. That it must be intended to show to the colonies, that there was no one branch of supreme authority, which Parliament might not abuse in such a manner, as to render it reasonable to deny, and necessary to resist it.' Then, after enumerating all their previous acts of oppression, he added, 'but the British legislature is now to convince the Americans, that this power, thus used, may be made by far the most oppressive, and worse than any of those they had hitherto denied. He was quite satisfied, that the bill was meant for nothing else, but to ex-

asperate the colonies into open and direct rebellion.' Mr. Burke, pursuing the same idea, and enlarging upon it, applied to the ministry, who brought forward the bill, the passage from Macbeth,—

'I am in blood

Stept in so far, that, should I wade no more,

Returning were as tedious as go o'er.'

He said, 'that the scheme was new, and unheard of, in any civilized nation, to preserve your authority by destroying your dominions. It was rather the idea of hostility between independent states; where one, not being able to conquer another, thinks to reduce its strength gradually, by destroying its trade, and cutting off its resources.' On the passage of the bill through the House of Lords, there was a protest against it, signed by sixteen peers, among whom are the names of Rockingham, Camden, and Fitzwilliam.

"The nature of the rights and liberties, consisted in the free participation in a fishery. That fishery, covering the bottom of the banks, which surround the island of Newfoundland, the coasts of New-England, Nova Scotia, the gulf of St. Lawrence, and Labrador, furnishes the richest treasure, and the most beneficent, that ocean pays to earth, on this terraqueous globe. By the pleasure of the Creator of earth and seas, it had been constituted, in its physical nature, ONE fishery, extending, in the open seas around that island, to little less than five degrees of latitude from the coast, spreading along the whole northern coast of this continent, and insinuating itself into all the bays, creeks and harbours, to the very borders of the shores. For the full enjoyment of an equal share in this fishery, it was necessary to have a nearly general access to every part of it. The habits of the game, which it pursues, being so far migratory, that they were found, at different periods, most abundant in different places; sometimes populating the banks, and at others swarming close upon the shores. The latter portion of the fishery had, however, always been considered as the most valuable, inasmuch as it afforded the means of drying and curing the fish, immediately after they were caught, which could not be effected upon the banks. By the law of nature, this fishery belonged to the inhabitants of the regions in the neighbourhood of which it was situated. By the conventional law of Europe, it belonged to the European nations, which had formed settlements in those regions.

"The continuance of the fishing liberty was the great object of the article;\* and the language of the article was accommodated to the severance of the jurisdiction, which was consummated by the same instrument. It was coinstantaneous with the severance of the jurisdiction itself; and was no more a grant from Great Britain, than the right acknowledged in the other part of the article,—or than the independence of the United States, acknowledged in the first article. It was a continuance of possessions enjoyed before; and, at the same moment, and by the same act, under which the United States acknowledged those coasts and shores as being under a foreign jurisdiction, Great Britain recognised the liberty of the people of the United States to use them for purposes connected with the fisheries. As a possession, it was to be held by the people of the United States, as it had been held before. It was not, like the lands partitioned out by the same treaty, a corporeal possession; but, in the technical language of the English law, an incorporeal hereditament,—and, in that of the civil law, a right of mere faculty, consisting in the power and liberty of exercising a trade, places, in which it is exercised, being occupied only for the purposes of the trade. Now, the right or liberty to enjoy this possession, or to exercise this trade, could no more be affected or impaired by a declaration of war, than the right to the territory of the nation. The interruption to the exercise of it, during the war, could no more affect the right, than the occupation, by the enemy, of territory, could affect the right to that. The right to territory could be lost only by abandonment, or renunciation, in the treaty of peace; by agreement to a new boundary line,—or by acquiescence in the occupation of the territory by the enemy. The fishery liberties could be lost, only by express renunciation of them in treaty,—or by acquiescence, on the principle that they were forfeited, which would have been a tacit renunciation."†

The treaty of '83 was an instrument of a peculiar character. It differed in its most essential circumstances from most of the treaties made between nations. It was a treaty of partition;—a treaty, to ascertain the boundaries and the rights of the nation, the mother country acknowledged to be

\* See Treaty, Art. 3.

† The Fisheries, and the Mississippi.

created by that instrument. Independence was one of the stipulations made in favour of America by Great Britain, the boundaries were another, the fisheries a third;—for the mother country asserted equal claims to all these rights or privileges. The treaties made by France or Holland with the United States before '83, were of a different description. Those countries had no pretensions to the government, territories or rights of the colonies. And, therefore, America did not seek from them an acknowledgment of her own rights or privileges.

The conduct of the American commissioners, in agreeing to the provisional articles without consulting the court of France, has never been fully explained. The 8th article of the treaty of alliance, absolutely, though not in direct terms, forbids either party to enter into any negotiations for peace without the consent of the other. The instructions given to the commissioners on this point, were as precise and positive as language could make them; and they were often repeated. We shall quote one resolution from the secret journals of Congress.—“Resolved, unanimously, that as neither France or these United States may of right, so these United States will not conclude either truce or peace with the common enemy, without the formal consent of their ally first obtained; and that any matters or things, which may be insinuated or asserted to the contrary thereof, tend to the injury and dishonour of the said states.” One of the commissioners, at least, was as deeply impressed as Congress with the impropriety of making a separate peace; and as late as January '82, only a few months before the provisional articles were signed, made use of the following emphatic language:—“The Congress will never instruct their commissioners to obtain a peace on such ignominious terms; and though there can be but few things in which I should venture to disobey their orders, yet if it were possible for them to give me such an order as this, I should certainly refuse the act. I should instantly renounce their commission, and banish myself forever from so infamous a country.” Speaking of the same individual in the preceding August, Mr.



Jay observes, "he seemed to be much perplexed and fettered by our instructions, to be guided by the advice of this court." It is impossible to suppose that these sentiments were not sincere. At that time it could neither have been for the welfare nor the honour of America to have consented to such an arrangement. M. de Vergennes had been at great pains to inform the American commissioners of the intrigues of the English for a separate peace; and had apparently spoken with pride and exultation of the readiness and firmness, with which he had resisted these endeavours. In the first instructions given to Mr. Adams, France having complained, that the commissioner was not directed to consult the French court, a resolution was adopted to remove this ground of uneasiness. England, as M. de Vergennes declared, in the spring of '82, offered France, to induce her to a separate peace, the possession of her conquests in the West Indies, the suppression of the commissary at Dunkirk, and advantages in the East. This proposal was indignantly rejected. Uncommon harmony, a mutual good understanding, and a ready communication of all important matters, appear to have prevailed up to the hour that the preliminaries were signed. The negotiation was conducted both on the part of France and of the United States, agreeably to the recommendation and advice of M. de Vergennes, expressed a few months before. Though each nation treated with a separate commissioner, the negotiation was simultaneous, and it was understood that the preliminaries should all be signed on the same day. On the 29th of November, Dr. Franklin wrote to M. de Vergennes, to inform him, that the provisional articles between Great Britain and the United States were agreed on. He concluded by saying: "To-morrow I hope we shall be able to communicate to your excellency a copy of them." The next day, the 30th, they were signed. But they were not communicated till after the signatures were affixed. The separate article respecting Florida was never communicated at all. The court of France regarded this proceeding with great dissatisfaction; and the minister soon expressed in bitter language, the chagrin and mortification he felt at the circumstance:

“I find great difficulty in explaining your conduct and that of your colleagues. You have concluded your preliminary articles without giving us information, though your instructions particularly directed you to take no steps without the participation of the king. You are going to raise in America hopes of an undoubted peace, and we are here in reality ignorant of the state of your negotiation. You are celebrated, sir, for wisdom; you are acquainted with the obligations of society; you have discharged your duties with exactness during your life. Do you think that in this business you have fulfilled those that bind you to the king? I shall not extend my reflections further. I leave them to your own ideas of propriety.”

We shall extract part of the letter Dr. Franklin wrote in answer to these reproaches. We believe none of our readers will think it remarkable for its dignity :

“Nothing has been agreed on in the preliminaries contrary to the interests of France, and no peace is to take place between us and England, till you have concluded yours. Your observation is, however, apparently just, that in not consulting you before they were signed, we have been guilty of neglecting a point of bienséance. But as this was not from want of respect for the king, whom we all love and honour, we hope it will be excused, and that the great work, which has hitherto been so happily conducted, is so nearly brought to perfection, and is so glorious to his reign, will not be ruined by a single indiscretion of ours. And, certainly, the whole edifice sinks to the ground immediately, if you refuse on that account to give us any further assistance. It is not possible for any one to be more sensible than I am, of what I and every American owe to the king, for the many and great benefits and favours he has bestowed upon us. All my letters to America are proofs of this, all tending to make the same impressions on the minds of my countrymen, that I felt in my own. And I believe that no prince was ever more beloved and respected by his own subjects, than the king is by the people of the United States. The English, I just now learn, flatter themselves they have already divided us. I hope this little misunderstanding will, therefore, be kept a perfect secret, and that they will find themselves totally mistaken.”

This direct deviation from positive instructions, this apparent ingratitude and perfidy to a faithful and valuable ally, is susceptible of a full and ready explanation.\* Early in 1782 it was foreseen that England was not the only country, that would present obstacles to a peace, safe and satisfactory to the United States. America, now independent, found herself compelled to resist Spain, claiming territory on the one hand, and France seeking an exclusive possession of the fisheries on the other. She had succeeded to the rights, the advantageous position, and a portion of the commerce of the mother country in the new world; and undoubtedly France and Spain were well aware, that the United States would become dangerous neighbours on the land, and troublesome competitors on the ocean. The American colonies had always been so, even while their trade was subject to the control and prohibition of Great Britain. But France and Spain did not anticipate, that America would either claim, or be able to maintain all the former rights of the colonies. They entered into the negotiation of '82 with the intention and expectation of extorting from England, to the injury of the United States, some portion of her territory, and a part of one of her most valuable privileges. Both those countries had a heavy balance to settle with Great Britain in the new world; and they remembered, with bitterness and mortification, the provisions of the two treaties of Utrecht and Paris.

Spain was the first court that advanced pretensions incompatible with the just and undoubted boundaries of the United States. At the time of Mr. Jay's negotiation in that country, in 1780, the Spanish minister, Count d'Aranda,† intimated

\* We have the following anecdote from a direct source. Dr. Franklin, one day sitting, during the discussion of the question of instructions, in Mr. Jay's room at Paris, said to that gentleman, "Will you break your instructions?" "Yes," replied Mr. Jay, who was smoking a pipe, "as I break this pipe;"—and immediately threw it into the fire.

† There is now in the Department of State at Washington a copy of Michel's map of North America, on which the Count d'Aranda traced, in the presence of Mr. Jay at Paris in the summer of '82, where

an intention, on the part of his government, of excluding America from territory to the westward of the Alleghany. The pretension was in every way ill founded ; but Spain was a powerful nation, governed by a Bourbon, in close alliance with France, firmly united to that country by a family compact, and an uncommon identity of views and policy. They had embarked in the general war with England, and were engaged in the general negotiation at Paris. The ministers of the two Bourbon princes acted upon all occasions in exact concert, and would mutually contribute either to depress England, or to abridge the new and unconfirmed powers and rights of the United States. In truth, to consult France concerning boundaries, was indirectly obtaining the approbation of Spain ; and the commissioners had every reason to suppose that latter country would never consent to the western frontier, marked out in the preliminary articles. The apprehension of meeting with obstacles in securing this valuable, nay, indispensable boundary, acted as a powerful inducement not only to hasten the progress of the preliminaries, but as a justifiable pretence for withholding the knowledge of them from the court of France. These considerations rendered it inexpedient to communicate, at any period of the negotiation, the separate article on the conditional boundaries of West Florida.

During the negotiation the frequent conferences between M. de Vergennes and M. d'Aranda were well known to the American commissioners. It was, also, ascertained that in

the Count was then Spanish minister, the boundaries of Spain, beginning, on the north, at the confluence of the Ohio and the Renhawah, and running round the western shores of Erie, Huron and Michigan to lake Superior. This boundary included all the Western States. As early as January 1780, the French minister communicated to Congress by order of his court the following statement of claims on the part of Spain.

"The exclusive navigation of the Mississippi. The possession of the Floridas. And the lands on the left bank of the Mississippi."

It is very clear, Spain intended to obtain from the United States an acknowledgment of these pretensions before she recognised the independence.

August '82, M. de Rayneval had been sent privately to London, and on the morning of his departure the Spanish minister went, contrary to his usual practice, with post horses to Versailles, where he passed several hours with M. de Vergennes. The object of this mission was supposed to be, to give notice to Great Britain, that France did not approve of the pretension of the United States to treat as an independent power,—to ascertain, whether England would agree to divide the fisheries with France,—and to impress upon England the determination of Spain to adhere to the exclusive possession of the Gulf of Mexico,—and to agree to give Great Britain, eventually, all the country, north of the Ohio. France, also, formally and publicly supported the pretensions of Spain to the Mississippi—De Rayneval wrote a long memoir on the subject, in which he remarks, “It is evident, that the Americans can only borrow from England the right, they pretend to have, to extend as far as the Mississippi. Before the treaty of Paris, France possessed Louisiana and Canada, and she considered the savage people to the east of the Mississippi either as independent, or as under her protection. Neither Spain nor the United States have the least dominion over the lands in question, as the king of Great Britain declared he had none by his proclamation of October 1763. By the line I propose, Spain will lose almost the whole course of the Ohio. As to the navigation of the Mississippi, it will follow with the property. If Spain preserves West Florida, she will be master to the 31st degree. Whatever may be the situation to the north of this parallel, the Americans can have no pretensions to it, not being proprietors of either bank of the river.” From a government maintaining these doctrines the United States could not look for much support and countenance in asserting her own just claim.

The boundaries America sought, were the legitimate boundaries of her country; at least, it ill became Spain to contest them. No other country in Europe, but England, could possibly claim a right to dictate to the United States on the western quarter; for England, in her original capacity, actually owned as far as the Mississippi. The negotiation, tak-

ing at this time an unexpected turn, America and England became parties to oppose the aspiring spirit of the house of Bourbon. Circumstances produced a sudden coalition between two nations, engaged for seven years in cruel warfare, and which had ended in the total discomfiture of one of them. It was for the benefit of both to conclude a peace as speedily as possible, England to lessen the number of her enemies, and America to prevent her former allies from despoiling her of those rights, her recent enemy had consented to resign.

On the side of France, the United States had much more to fear. She was disposed to curtail their fishing rights and privileges, to maintain Spain in her pretensions respecting boundaries, and to aid England in exacting a compensation for the loyalists. A letter written by M. de Marbois, secretary of the French legation, from Philadelphia, dated March 13th, '82, intercepted and decyphered at the time, if it did not give the first intimation of similar designs in the French court, strengthened at least, the suspicions before entertained. M. de Marbois advised M. de Vergennes to cause it to be intimated to the American ministers, "his surprise that the Newfoundland fisheries have been included in the additional instructions. That the United States set forth pretensions therein, *without paying regard to the king's (French) rights*, and without considering the impossibility they are under of making conquests, and of keeping what belongs to Great Britain.\* It will be better to have it declared at an early period to the Americans, that their pretensions to the fisheries of the great Bank are not founded, and that his majesty does not mean to support them." These extracts, taken in connexion with the obvious policy of the French court, and the declaration of de Rayneval to Jay and Franklin at Passy in October '82, that the American fishing right should not extend beyond a coast one, could leave few doubts concerning its designs. The commissioners had received precise and positive instructions, on no account to surrender the fishe-

\* Mr. Ralph Izzard, of South Carolina, suggested to Mr. Adams, in April '78, that France had formed a design to deprive America of the fisheries.

ries.\* The importance of this branch of commerce was well known to them; they saw it was in jeopardy, and they be-

\* This remark requires an explanation. In the instructions to conclude a *treaty of peace*, an "equal common right to the fisheries," was *not* made an ultimatum. But on the subject of a "treaty of commerce," the following directions were given to the commissioners:—"In order that you may be the better able to act with propriety on this occasion, it is necessary for you to know, that we have determined, 1st. That the common right of fishing shall in no case be given up. 2d. That it is essential to the welfare of all these United States, that the inhabitants thereof at the expiration of the war, should continue to enjoy the free and undisturbed exercise of their common right to fish on the banks of Newfoundland, and the other fishing banks and seas of North America, preserving inviolate the treaties between France and the said states. 3d. That application shall be made to his most Christian Majesty to agree to some article or articles for the better securing to these states a share in the said fisheries. 4th. That if, after a treaty of peace with Great Britain, she shall molest the citizens or inhabitants of any of the United States, in taking fish on the banks and places hereinafter described, such molestation, being in our opinion a direct violation and breach of the peace, shall be a common cause of the said states, and the force of the Union be exerted to obtain redress for the parties injured; and 5th. That our faith be pledged to the several states, that without their unanimous consent, no *treaty of commerce* shall be entered into, nor any trade or commerce carried on with Great Britain, without the explicit stipulation hereinafter mentioned. You are, therefore, not to consent to any treaty of commerce with Great Britain, without an explicit stipulation on her part, not to molest or disturb the inhabitants of the United States of America in taking fish on the banks of Newfoundland, and other fisheries in the American seas, any where, excepting within the distance of three leagues of the shores of the territories remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation. And in the negotiation, you are to exert your most strenuous endeavours to obtain a nearer distance to the Gulf of St. Lawrence, and particularly along the shores of Nova Scotia, as to which latter we are desirous that even the shores may be occasionally used for the purpose of carrying on the fisheries, by the inhabitants of these states." The parties in Congress on the fisheries, appear to have been equally divided; at least, the struggle was very long. One party could not obtain a majority to induce Congress to give them up, nor the other to make them an ultimatum of peace.



lieved it to be more for the interest of the country to adhere to this portion of their instructions, than to disobey those, that related to the communication of the preliminaries.\*

The French minister was also disposed to unite with England in insisting upon a compensation to the loyalists. France did not join in the war for the sake of supporting the cause of liberty; nor could the French government regard the principles of the American revolution with kindness or confidence. It was natural France should feel a greater sympathy for monarchical governments, and individuals that maintained monarchical principles. When she assisted America, it is not at all likely she looked to the kind of government that would be established; but it is most likely she would have preferred the establishment of any other than a republican one; at any rate, there appears to be no inconsistency in supposing that France might be desirous that the United States should succeed against England, and at the same time, think it extremely just that a compensation should be given to that portion of the people, who had been faithful to their king. The preliminaries signed with England contained nothing unfavourable to France. England ceded to the United States nothing that either France or Spain could under any reasonable pretence claim. And it was made a condition of the preliminaries that the definitive treaty should not be concluded till peace was made between England and France. The commissioners may have been guilty of a neglect of *bienséance* (to use Dr. Franklin's expression), but no harsher term could justly be applied to their conduct. France set the example of disregarding the spirit of concert and mutual aid and confidence, enjoined upon the two powers by the treaties of amity and alliance; for she was secretly using her influence, at that time very powerful, in a manner injurious to America. The confederation, therefore, was

\* Congress directed the commissioners to communicate every step to the French minister, "ultimately to govern themselves by the advice and instruction of the French court." This arrangement actually made M. de Vergennes minister plenipotentiary for the United States. It committed their independence and interests to his control.

no longer under any obligation to adhere to the conditions of the treaty of alliance. Being opposed, nay deserted, by their ally on the first approaches of peace, the American commissioners considered themselves absolved from obeying the instruction that directed them to consult France. Indeed, the silence of the French minister in relation to this proceeding, affords ample justification for their conduct. The only notice of the dissatisfaction of his government, we have on record, is in the letter written to Franklin by M. de Vergennes. The minister rather intimates there that the commissioners had been guilty of an act of indecorum. The letter is severe and reproachful in its terms and allusions, but it does not treat the deviation as a very serious business, as in reality, it was not. The intercourse between the ministers was not interrupted; M. de Vergennes sent despatches by the vessel the commissioners had engaged to carry a copy of the provisional articles;—the resident in America entered no protest touching the conduct of the commissioners, nor did he make any complaint whatever;—and the French court appeared to be satisfied with the explanations that were given. We may, therefore, infer from these circumstances, either that the government thought the deviation quite insignificant, or that there were sufficient reasons for it.\* These remarks are made for the single purpose of justifying the American commissioners, though it will appear by an extract of a letter, we are about to make from Dr. Franklin, of July 1783, that the commissioners, themselves, were not agreed on the motives, which governed M. de Vergennes. Messrs. Adams

\* When the definitive treaty was signed, the English commissioner refused to sign it at Versailles. It was therefore signed at Paris. M. de Vergennes desired the American commissioners to send him an express to Versailles when it was done, as he did not choose to sign on the part of France, till he was sure the American treaty was completed. It has been stated by a person of high authority, that an attempt was made in Congress to pass a resolution of censure on the commissioners for the deviation from their instructions in regard to the court of France. But it was not successful; nor do any traces now remain of the votes or debate.

and Jay seem to have had little confidence in the professions of the French court, and upon those topics in regard to which a diversity of opinion existed, they prevailed against Dr. Franklin ; but this circumstance produced neither coldness nor discord. " It gives me great pleasure," writes Mr. Jay, December 12, '82, " to inform you that perfect unanimity has, hitherto, prevailed among your commissioners. There has not been the least division or opposition among us, since the negotiation began with Mr. Oswald. Mr. Adams was particularly useful respecting the eastern boundary ; and Dr. Franklin's firmness on the subject of the tories did us much service." The passage to which we alluded in the beginning of this paragraph, is as follows. " I will only add, that, with respect to myself, neither the letter of M. de Marbois, nor the conversations respecting the fisheries, the boundaries, the royalists, &c. recommending moderation in our demands, are of weight sufficient, in my mind, to fix an opinion, that this court wished to restrain us in obtaining any degree of advantage, we could prevail on our enemies to accord, since those discourses are fairly resolvable by supposing a very natural apprehension, that we, relying too much on the ability of France to continue the war in our favour, and supply us constantly with money, might insist on more advantages, than England would be willing to grant, and, thereby, lose the opportunity of making a peace, so necessary to all our friends."

To France herself, America was under great obligations. That country had certainly afforded material assistance, especially in the supply of arms, money and military stores. These articles were furnished at an early period of the war, when they were indispensable, and could not have been obtained from other countries. In the course of '78, '79, '80, France loaned America 8,000,000 on favourable terms. It is unreasonable and even ridiculous to enquire into the motives, that induced her to make the alliance. It is sufficient to say that it was most fortunate for America she could offer such inducements to France as ultimately to lead her into the measure.

This treaty, exceedingly favourable and honourable to America, was negotiated by the commissioners with uncommon address; they took advantage successfully of the ancient jealousy and enmity that existed between England and the house of Bourbon. Without entering into this fearful war for independence, America obtained an acknowledgment of it in the fullest manner, as well as a confirmation of the original boundaries of the colonies, and a recognition of her rights and privileges in the fisheries. She made a much more favourable treaty with Great Britain than either Spain or France. The Spanish minister, de Florida Blanca, was not satisfied with the peace; he said of it: "The French minister was too precipitate in beginning the war, and too precipitate in making peace." A Spaniard would be expected to say as much. He, also, expressed an opinion, that Vergennes had concerted with the Americans to withhold the preliminaries, in order to force Spain to a peace. In England the treaty with America was unpopular, and taken, together with the concessions she was absolutely under the necessity of making at the same time to France and Spain, threw the ministry into a minority in the first debate in the House of Commons. The acknowledgment of the independence of this country would have cost any administration their places, but the time had come when the colonies must be sacrificed, together with the ministry that consented to the dismemberment,—an act of self-devotion to the good of their country, and, one may truly say, of the world. Lord Shelburne's administration fell before the combined array of the original opposition, represented by Mr. Fox, and that portion of the ministerial party that had declared the war, and had retired with Lord North. From this state of parties proceeded the most monstrous and unnatural coalition to be met with in English history, but upon which the nation, at an early hour, wreaked the full measure of its vengeance. On the part of Great Britain, it was a treaty to declare the independence of America. The other conditions, concerning territory and the fisheries, though undoubtedly extorted, followed as necessary consequences. But time has proved that

necessity acted, on this occasion, the part of good policy. America would have been uneasy under any terms, that at all abridged the freedom and perfect independence of her situation. She had become a nation, and she properly and naturally required all those rights and privileges, which belong to that condition. Great Britain could not have held a hunting lodge, or exercised a single franchise within territory or jurisdiction, once strictly colonial, without awakening immediate jealousies, or speedily interrupting the peace.

Before finishing the account of this treaty, it is only necessary to remark, that the commissioners did not succeed in making any commercial arrangements. They thought it advisable to defer the consideration of that subject, though they had already secured one of the principal objects, proposed in a commercial treaty. The English sought for delay in this business; they were not prepared for the new state of things; they had not determined on what conduct to pursue in regard to America; or they might have had hopes that the revolution was not thoroughly consolidated. Evidently, an expectation was entertained, that the confederacy would dissolve from weakness, and that some portion of the wreck would seek again the support and union of the mother country; a sentiment, which was universal throughout Europe.

## CHAPTER V.

## TREATIES OF 1785 AND 1799 WITH PRUSSIA.

*Fourth power in Europe to conclude a Treaty—Lee appointed in '77 to Berlin and Vienna—Not received by either court—Remarks on Austria—His full powers stolen at Berlin—His account of that business—Hessians made to pay same toll as cattle—Carmichael's letter—Letter from King to Lee—Letters from Prussian Minister—Adams respecting Elliot—Prince Henry—Treaty of '85—Peculiar provisions—Private war abolished—Treaty of '99—Last mission to Prussia political—Dangerous policy.*

THOUGH Prussia took no part in the revolution war, she was the fourth power in Europe to conclude a treaty of amity and commerce with the United States.\* At peace with England, soon after the commencement of hostilities Prussia was threatened with a war by the emperor, which, indeed, actually took place about the time, the United States applied to her government for aid and alliance. But Frederick II., usually called the Great, was not animated with a friendly feeling towards England, and it is well known, he viewed the progress of the American revolution with satisfaction.† Very early in the war, Congress took steps to obtain the co-operation of Prussia, together with that of some other powers in Europe ; and in May 1777, William Lee, of Virginia, was appointed a commissioner to the courts of Vienna and Berlin. The objects of the mission are fully explained in his instructions, of which we subjoin an extract :

“ As it is of the greatest importance to these states, that *Great Britain be effectually obstructed in the plan of sending German and*

\* The treaty of '83 with England, was of a different description.

† The reader will find some remarks on this subject, in the third volume of his works.

*Russian troops to North America*, you will exert all possible address and vigour to cultivate the friendship and procure the interference of the emperor of Germany, and king of Prussia. To this end, you will propose treaties of friendship and commerce with these powers, on the same commercial principles as were the basis of the first treaties of friendship and commerce, proposed to the courts of France and Spain by our commissioners, and which were approved in Congress on the seventeenth day of September 1776; and not interfering with any treaties, which may have been proposed to, or concluded with the courts above mentioned. For your better instruction herein, the commissioners at the court of Versailles will be desired to furnish you from Paris with a copy of the treaty, originally proposed by Congress to be entered into with France, together with the subsequent alterations, that have been proposed on either side. You are to propose no treaty of commerce to be of longer duration than the term of twelve years from the date of its ratification by the Congress of the United States. And it must never be forgotten in these commercial treaties, that reciprocal and equal advantages to the people of both countries be firmly and plainly secured."

- Mr. Lee was not received by the emperor, the court of Vienna positively refusing to have any thing to do with the revolted colonies. He appears to have been in that capital in May 1778, and was then advised by the French minister "to wait with patience till things wore a more favourable aspect, than they do at present." We believe (with an exception already mentioned) this is the only instance of an endeavour in our history to enter into any sort of diplomatic arrangement with Austria. Though occupying so large a portion of the richest, most ancient and civilized part of Europe,—at one time at the head of the German empire,—now decorated with the celebrated iron crown of the Lombards, and actually embracing within her dominions a greater extent of fertile and highly cultivated territory than any other Christian state, still, Austria, on account of a remarkable absence of sea ports, has presented few inducements to nations, (whose foreign intercourse is strictly commercial) to enter into the ordinary diplomatic courtesies. A single port or haven at the head of the Adriatic, once the proudest sea



of the old world, is the only maritime inlet of any note, by which the vast possessions of this empire, stretching out from the spurs of the Alps, north, and east, and south, can now be approached.\*

Prussia practised the same coquetry towards this country, she had experienced, in the onset, from France, and, during the course of the revolution, from the principal states of Europe. But, owing to her military position and resources, the warlike and aspiring character of her population, and the uncommon success, that had attended her military enterprises, Prussia (whose territory had just been greatly increased by the first and iniquitous partition of Poland), occupied, in the commencement of the war with the mother country, high and formidable ground. Abounding in those materials of which we then stood most in need, the importance of her aid and alliance impressed itself forcibly upon the attention of the continental Congress. This monarchy sprung, to speak justly, from an intrenched camp, and (to use an expression of the Roman historians, in describing the expansion and development of their empire) the foundations of it were literally laid, wherever the Prussian eagles extended. It partakes much of the nature of a political phenomenon to behold, in modern times, a new nation, gradually reared into full life by the force of arms, in the midst of an ancient, civilized continent. This process has, heretofore, been reserved for the various barbarous tribes from the east and north, that, from time to time, have been seen, in the shape of Huns, Goths, Vandals, Ostrogoths, spreading themselves like a mildew, over the smiling, rose-coloured plains of Europe, just in proportion as luxury and corruption have preceded them. Held in the north, on the edge of civilization, as an instrument of retribution, to be brought forth at the interval of

\* Arthur Lee, who was in Vienna the preceding year, wrote, May 27, 1777, to the Commissioners at Paris. "I reached this in three days from Munich. I shall not leave till the 29th. Dresden will be my next stage. There is a cold tranquillity here, that bodes us no good. 'On ne peut échauffer la froideur allemande.' From what I learn, we need be under no apprehensions from Russia."

ages, either to repress the ambition of individuals, or to restore the equality of nations, they may be compared to the water standing in a fixed level above the rich plains and meadows of Lombardy and Holland, which never fails at the first decay or weakness in the moles and dykes, to pour through the openings, and cover with slime and ruin villages and vineyards, the cornfield as well as the pasture. Though Prussia, towards the end of the nineteenth century, had acquired much additional territory, and appeared firmly seated in her dominion, yet there was a period, during the last twenty years, when the house of Brandenburg was just on the verge of being compressed within her original marches and scanty possessions. But late events have removed those doubts, and, at this moment, she occupies her place in the German empire, as the undisturbed and dangerous rival of Austria.

No sooner had the king, Frederick II., been informed of the revolutionary movements of America and the declaration of July '76, than, urged by that watchful, searching, sagacious spirit, for which, among all his contemporaries, he was truly conspicuous, he gave directions to his minister at Paris to inquire, with care and discretion, into the position of the American agents at the court of Versailles. By a man of reflection and of a penetrating mind, the resistance of the colonies could never have been viewed as an ordinary transaction, though we are bound to say, that, with all his acuteness and power of combination, Frederick seems to have regarded the Revolution only in the twofold light of doing a mischief to England, against whom he exhibited uncommon antipathy, and affording, perhaps, some slight, casual commerce to the Prussian ports in the German sea. A conference, accordingly, took place at Paris between the agent of the king of Prussia and Silas Deane. From the correspondence and journals of that individual, now remaining, it appears that the Prussian made proposals for a commercial treaty, and expressed a desire an American should be sent to Berlin. This was done, as he declared, at the instance of the king, who was desirous of having a clear and full idea

of our commerce, and who had been dreaming (to use the expression of the Prussian agent) for several years of turning Embden into another Amsterdam. Upon this invitation, and at the request of Mr. Deane, William Carmichael, at that time in Paris, went to Berlin in November '76; but not the least notice was taken of him, either officially, or in a private manner.\* Before the commission to William Lee

\* We give in this note a few extracts from a letter Mr. Carmichael wrote from Amsterdam, on his way to Berlin :

“AMSTERDAM, November 1776.

“To the Committee of Correspondence.

“Gentlemen,—Here I have endeavoured to engage merchants to speculate in a direct commerce to America, to find out the sentiments of the people in general respecting us, to know whether in case of necessity, the United States would be able to negotiate a loan, whether England would be able to obtain further credit, and by this barometer of the ability of princes, to discover their present situation. On these heads I have written Mr. Deane,—but having an opportunity, by the way of St. Eustatia, and thinking none should be neglected of giving information, though mine perhaps may not be of importance enough to merit that title, I have taken the liberty of addressing the honourable Committee. Arriving but two days after the accounts had reached this city of our misfortune on Long Island, I found many, even of the sanguine friends of America, defected, and those of England almost in a frenzy of joy. In this disposition, it is easy to judge, no hopes could be entertained of engaging merchants in a direct trade. I find they have the greatest inclinations to serve us, and at the same time themselves, for no people see their interest clearer; but their fears that we shall be subdued, the confident assertions of the friends of England, confirming these apprehensions, the prodigious sums they have in the English funds, with this unlucky business at New-York, all conspire to prevent direct speculation. As my letters from Paris introduced me to the first houses here, I have had the best opportunity of knowing their sentiments, and I can venture to say, that with many who are apparently adverse to us, 'tis interest combatting with principle,—for, insulted, searched and plundered as the Dutch were the last war, and are at present, their individuals by no means want sensibility to feel, though the public wants spirit to resent the injury.

“I hope it will not be long before all Europe will own us in another character. It is very certain that, without a very material and apparent success of the British arms in America, a loan would be very

for Austria and Prussia arrived in Europe, Arthur Lee, one of the most faithful, zealous and industrious of our foreign agents, had been induced, by the representations made at

slowly negotiated for England here. There is nothing hinders them now from selling out of the English funds, but their not knowing what to do with their money ;—for this country may be called the treasury of Europe, and its stock of specie is more or less, according to the necessities of the different princes in Europe : It being a time of peace, the call has not been very great of late. Having mentioned the credit of England, that of France is next to be considered ; and, I am sorry to say, that has been very low here of late, the dreadful mismanagement of the finances in the late king's reign. The character of the late comptroller general, M. de Olugny, had reduced it so low, that it was impossible to borrow any thing considerable on perpetual funds. By life rents, something might be done. Perhaps a minister of Finance, in whose probity the world have a confidence, may restore their credit. At this moment that is in some measure the case, for the French stocks rise on the appointment of M. Taboreau. That it is possible for France to borrow, may be demonstrated, for at the time M. Turgot was removed, he was negotiating a loan here, and was likely to succeed, for sixty millions of guilders.

“ The credit of Spain is extremely good, and that kingdom may have what money it will, and on the best terms. The emperor's credit is also good,—not as emperor, but from his hereditary dominions. Sweden and Denmark both have good credit. The former the best ; they have money at four per cent., and it is not long since the king of Sweden borrowed three millions of guilders at this interest, to pay off old debts at five per cent. ; his interest is paid punctually. Prussia has no credit here ; but his treasury is full, by squeezing the last farthing from his people,—and now and then he draws a little money from this republic, by reviving obsolete claims. The credit of the empress of Russia is very good, for she has punctually paid the interest of twelve millions of guilders, which she borrowed in her war with the Turk, and has lately paid off one million and a half of the principal ; these are the strongest circumstances she could have in her favour, with a mercantile people. I have this state of credit from persons employed in negotiating the several loans, and therefore can depend on the truth of the information.—To come next to America : should time and necessity oblige her to look abroad for money. In the present state of affairs, it is not probable that a loan is practicable. But should success attend our arms, that is, should it appear evident that

Paris, to undertake a journey in the month of June '77, to Berlin. We observe that he was accompanied by a Mr.

we are like to support our independency, or should either France or Spain acknowledge our independence, in either of these cases I believe we might have money ; and when it was seen that we were punctual in our first payments of the interest, we should have as much as we pleased.

" The price of our product is great : rice sells for 25s. sterling per cwt., and tobacco for 8 stivers and 4d. per pound. You have been threatened that the Ukraine would supply Europe with tobacco. It must be long before that can arrive. I have seen some of its tobacco here, and the best of it is worse than the worst of our ground leaf. 400,000 pounds have been sent here this year. The Russian ambassador said at the Baron le Guerres, ambassador from Sweden, where I had the honour to dine, that Russia soon would be able to supply the market with that article. In this he spoke more like an ambassador than a merchant. I took occasion in reply to observe, that if that was the case, and on many other accounts, it was the interest of his mistress that all intercourse between Great Britain and America should be broke off, for that then the former would be dependent on Russia for all these articles, which hitherto the latter had supplied her with. Having expressed a desire of knowing these reasons at large, with the assistance of Mons. D——s, and the approbation of Mr. D., I purpose giving in a little memoir on the subject, which, the ambassador assures me, shall be sent to Petersburg. Not being so sanguine as to think that it will prevent Russia from supplying England with troops, should the other demand them, but it may give a secret dilatoriness to their assistance, which may finally operate in our favour.

" I need not mention to you any thing respecting what is like to take place in Europe another year ; for of that ere this you, I hope, have information. I will only say, that the greater part contemplate with pleasure the gloomy prospect for England ; there is not an envoy of the most petty state in Italy but exults at it. The want of intelligence from America hurts the cause prodigiously in Europe, and the anxiety of those, who have its interest at heart, is from that circumstance inconceivable. I hope I need not assurances to convince the honourable Congress of the zeal with which I wish to serve them ; to be directed by that honourable body in what manner to do it most effectually will be the happiest circumstance of my life.

" I have the honour to be, &c.

" WILLIAM CARMICHAEL."

Sayre, who had been sheriff of the city of London, an American, we believe, by birth, and who, after the peace, settled in the state of Pennsylvania, where he died. Having given notice of his arrival to M. de Schulenburg, the Prussian minister, he received from him, on the 9th of the month, the following letter. "I lose no time in assuring you, as I did in the letter addressed to you at Paris, that your residence at Berlin will not be, at all, disagreeable to the king, provided you live there as an individual, and without assuming a public character. As to the information you give me respecting commerce, you will please to add a memorandum of the places, where assurances are to be effected on vessels destined for America, and the premiums to be paid. I will then examine your propositions, and shall soon be able to inform you, whether we conceive it practicable to make an experiment of the kind with success." This letter fully explains the object the Prussian government had in view in inviting Mr. Lee to Berlin. Another letter was addressed, on the 26th June, to the American agent by the same individual. "His Majesty cannot, in the present instance, embroil himself with the court of London. Moreover, our ports have hitherto only received merchantmen. It will be necessary for us to inform ourselves, how France and Spain conduct themselves, and what formality they have observed towards your privateers, consistent with the friendship they owe to Great Britain. The result of this information will decide, whether and upon what terms the desired permission can be granted." This letter applied to a request of Lee's, that the Prussian ports might be opened for the sale of American prizes.

Thiébault, in his memoirs of the court of Berlin, mentions the singular fact of two Americans having had their private papers stolen from their hotel at Berlin. Those individuals were Mr. Lee and his companion. An account of this business is given in a letter of the former gentleman from Paris:

"While I was at dinner one day, some persons contrived to get into my chamber, which was locked, and broke open my desk, from whence they took all my papers. I soon discovered the robbery,

and, alarming the police, the English envoy, who happened to be in the hotel, when the alarm was given, immediately went home, and in a few minutes the papers were returned, apparently unopened. The envoy went to the king the next day, but was not admitted. It appeared on examination, that his servant had offered a large sum to the servants of the house, if they would steal my papers. But as I never went out of my room upon the most trifling occasion without locking them up, they had recourse to violence. The resentment of every one at so outrageous an act was soon lost in the contempt of the envoy's folly in returning, what he had incurred so much risk in acquiring. The minister of state informed me they would do nothing more than insist on his recall, which, considering the unfavourable light in which he stood, he would probably do himself."

In reality, no notice whatever was taken of this affair, either by the police, (to whom it properly belonged, Mr. Lee not being an official person) or by the minister of state, for Mr. Elliot remained many months, after the transaction, at Berlin, where, notwithstanding the king's dislike of his nation, he appears to have been a favourite.\*

\* The reader will find a confirmation of this account, in regard to Mr. Elliot, in Mr. Adams' Letters from Silesia, when minister at the court of Berlin, pp. 256, 257, 258.

"Mr. E—— is in person, and at times in manners, one of the most accomplished gentlemen I ever knew. He was extremely civil to us last autumn, though I had occasion afterwards to know that his civilities did not then proceed from any cordial kindness towards us; but that, as Americans, he saw us at first with embarrassment and dislike. These sentiments, in the course of our intercourse with him at that time, I believe gradually wore away; and as they had probably proceeded from the supposition that his name was odious to Americans, owing to the transaction at Berlin, relative to Mr. Lee's papers, during the American war, I found him now designedly and repeatedly recurring to that subject in his conversation. After observing that it was now a circumstance that might with full freedom be talked of as a mere historical occurrence, he solemnly declared that the seizure of Mr. Lee's papers was not made by his orders; that it was entirely the act of an officious servant, who thought to do him a service by it; that when the papers were brought to him he did look over them indeed, and found among them only two of any consequence; one, the



When Mr. Lee first arrived in Berlin, the king was absent on a review of troops ;—but on his return, he addressed to the American agent the following remarkable letter.

“POTSDAM, July 2, 1777.

“The king, having received Mr. Lee’s letter, dated Berlin, July 1, and his complaint of the robbery, that has been committed, is pleased to return him the answer, that his Majesty has just ordered his Minister of State to hear what he has further to say on the subject. That for this purpose, Mr. Lee may communicate to the said minister, without reserve, every thing he may wish to inform his Majesty of;—who assures him by the present letter, that an inviolable secrecy shall be observed respecting the overture, he may think proper to make through this channel.”

This letter, though written in the king’s own hand, is encouraging no further, than as manifesting a desire to enter into a direct, confidential intercourse with the American agent. It conclusively reserves the right of adopting such definitive arrangements, as circumstances, or the information procured, may prescribe. But the letter merits to be preserved for the single consideration of being written in the year ’77 by the great Frederick, in a confidential manner, to an authorized commissioner of this country.

The presence of Mr. Lee at Berlin was well known to Mr. Elliot, the English minister at that court, and, whether the temporary loss of Mr. Lee’s papers was in any manner beneficial to Mr. Elliot, the object of this gentleman’s mission (to purchase arms and obtain other assistance) could not have been concealed from him. It was not only matter of general and public conversation at Berlin, but a contemporary writer, residing then in that capital, informs us, that the British minister became immediately intimate with the

draught of an unfinished treaty with Spain, and the other a letter from Frederick the Second, or one of his ministers, promising that if any great power in Europe would set the example of acknowledging the independence of the United States, he would be the first to follow it. I am inclined to believe that this account is true, and I was pleased to see the anxiety, with which Mr. E. wished to remove the imputation of having premeditated that act of violence.”

American agent, and treating him as a countryman, insisted upon his being indulged with the constant pleasure of his society. It was during one of these hours, when Mr. Lee was affording Mr. Elliot the benefit of his company, that his portfolio was removed from his lodgings, and it then contained, at least, two of the letters of the Prussian minister. At a public audience at this period, the king said to the English minister, "Well, sir, you are at war with your colonies." "Yes, sire, but we hope soon to make up." "I hope so too, but war is a terrible process for bringing about a reconciliation. I have had, sir, so much to do with war, that upon that subject I may be allowed to have settled opinions. It is truly frightful to be obliged to carry on a war, even, at home, an army has so many wants, for which it is so difficult to provide in season. But if your army is at the other side of the globe, believe an old practitioner, when he says it, that to provide these troops with every thing they may want, is the masterpiece of human prudence."—Mr. Elliot received these remarks with entire coolness, probably perceiving, that some part of the counsel was dictated by feelings not of the most flattering kind to his own country. He, besides, appears to have been a man of talents and liveliness of mind, and to the various remarks of condolence and sympathy, made to him by foreign ministers on the issue of the contest, after France had joined the colonies, he replied,— "The worst that can happen is, that instead of being the first people in the world, we shall then be the second."

The last extract it is important to recite, will show, in a single word, the reason for which Prussia refused Mr. Lee's propositions. It is from a letter of M. de Schulenburg of August 8, 1777. "Prussia can do nothing, because France has done nothing. We must wait for more favourable circumstances to establish a commercial convention." But the Prussian government followed with a watchful eye the course of the Revolution, and, in that respect, seems to have shown a penetration and foresight, it had the honour of sharing with a single government in Europe. In November '77, M. de Schulenburg wrote to Mr. Lee in Paris, soliciting precise

information concerning the reported capture of Burgoyne ; and, on the 16th of January of the following year, he addressed him a letter of a more formal description.

“ His Majesty hopes, that your generous efforts may be followed with entire success, and as I have already apprised you, he will not hesitate to acknowledge your independence, whenever France, more directly interested in the event, shall give the example. His Majesty would have no difficulty in receiving your vessels into his ports, if he was not entirely destitute of the means of avenging any insults, that might be offered them within his jurisdiction. Embden, though a safe and excellent harbour, is not provided with fortifications. He is, therefore, unwilling to expose himself to this indignity. As to the muskets and other arms of our manufacture, you are at liberty to purchase or command them, and the bankers, Spelbergers, have received orders to deliver such as you may require. I enclose a memorandum of the prices paid by the king.”

The treaty of alliance with France was not known till two months after the date of this letter, but the king of Prussia, embarrassed by the state of Germany, and menaced by the English navy, never redeemed a pledge, thus formally given. Still, he was favourably disposed, and took every opportunity to maintain an intercourse, and to secure for himself, without a direct engagement, some share of the commercial benefits, that might result from the future emancipation of the colonies. In February 1779, M. de Schulenburg again wrote to Mr. Lee ; and it is the last extract we shall make. “ The merchants of North America, who should come, with their merchant vessels, into the ports of his Majesty to trade there, in merchandise not prohibited, should have full liberty, and should be received, in every respect, as the merchants of other countries.”—It is not necessary to go into the nice discussion, how far such offers are violations of neutrality. There is no doubt a precise rule on the subject in the laws of nations, but we learn from a brief experience, that the just application of the principle mainly depends on the direction, that the contest, between colony and parent state, may take.

It was said at the time, that Frederick compelled the re-

cruits of Hesse Cassel, who had been bought to carry on the war in America, (and who had occasion to pass through his dominions, in order to reach their places of embarkation,) to pay the same toll or duty per head, as was exacted from cattle. The king may have considered this an ingenious piece of pleasantry, or have adopted this mode of expressing his abhorrence and disgust at the practice of selling christian men. Nations, in alliance with others in times of war, often transfer their troops, and, in coalitions, nothing is more common than for one party to furnish the subsidy, and the other the army. In all ages, men have, as individuals, entered into foreign service; but, we believe, that the conventions, made in the year '76 with the states of Brunswick and Hesse Cassel, and county of Hanau, present the first instances in history, where governments, for the purpose of enriching their treasuries, have condemned their subjects to fight, not only in a foreign cause, but against a country, with whom their own was at peace. Some Prussian officers, however, entered into the American service, and made themselves very useful, (one in particular will always be gratefully remembered) but they were not sent by the government; nor are we aware, that Frederick took an active part in the revolution, notwithstanding the intimation that has been given in regard to prince Henry.

Peace having been concluded with Great Britain, the independence of the United States acknowledged, and the American commissioners at the court of Versailles having received general instructions to conclude treaties with the powers of the continent, a treaty was made at the Hague in September '85, with Prussia.\* It was negotiated on the

\* Having already given numerous extracts from other treaties, we shall in this place only select the provisions of this treaty that are peculiar, remarking that it contains the stipulation respecting freedom of conscience, already cited in the treaty with the Netherlands, and all other arrangements of the most favourable kind concerning commerce.

"ART. 2. The subjects of Prussia may frequent the coasts and countries of the United States, may reside and trade there; and allow-

part of America by Messrs. Franklin, Jefferson and Adams, and on the part of Prussia by M. de Thulemeyer. This instrument, ratified the next year by Congress, was the last public act of Dr. Franklin in Europe.

ed to enjoy all the rights and privileges of commerce granted to the most favoured nations.

"ART. 3. American citizens may freely trade to the Prussian dominions; may reside there; and are entitled to all the privileges of commerce and navigation granted to the most favoured nations.

"ART. 4. More especially each party shall have a right to carry their own produce, manufactures, and merchandise, in their own or any other vessels, to any parts of the dominions of the other, where it shall be lawful for all the subjects or citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandise of the other, which all the said citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only, as are or shall be paid by the most favoured nation. Nevertheless, the king of Prussia and the United States, and each of them, reserve to themselves the right, where any nation restrains the transportation of merchandise to the vessels of the country of which it is the growth or manufacture, to establish against such nation retaliating regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandise whatsoever, when reasons of state shall require it. In this case, the subjects or citizens of either of the contracting parties, shall not import nor export the merchandise prohibited by the other; but if one of the contracting parties permits any other nation to import or export the same merchandise, the citizens or subjects of the other shall immediately enjoy the same liberty.

"ART. 5. The loading or unloading of vessels of each party, not to be constrained or impeded, in the ports of the other.

"ART. 6. All lawful examination of goods for exportation, to be made before they are put on board; and no search of vessels at any time, except in case of fraud.

"ART. 7. Each party to endeavour to protect the vessels and effects of the other, within their respective jurisdictions, by sea or land, &c.

"ART. 8. Vessels of either party, coming on the coasts or entering the ports of the other, and not willing to break bulk, to be allowed freely to depart, &c.

"ART. 9. The ancient and barbarous right to wrecks, abolished between the parties.

This treaty, which has been called a beautiful abstraction, is remarkable for the provisions it contains, though it does not appear that they have been attended with any good con-

"ART. 10. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all rights of *detracton* on the part of the government of the respective states. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published by his majesty the king of Prussia, to prevent the emigration of his subjects.

"ART. 11. Liberty of conscience secured ; but no insult to be offered to religion.

"ART. 12. Free trade allowed with an enemy. Free ships to make free goods. Free ships to protect persons, except soldiers in the actual service of an enemy.

"ART. 13. And in the same case of one of the contracting parties being engaged in war with any other power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandise heretofore called contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of one of the parties to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation, and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding ; paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors : and it shall further be allowed to use in the service of the captors, the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed, of a vessel stopped for articles heretofore deemed contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be admitted to do it, and the vessel shall not, in that case, be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

"ART. 14. One of the parties being at war, and the other at peace,

sequences to the parties, or have been of practical utility to the world. Blockades of every description were abolished,—the flag covered the property,—contrabands were exempt-

the neutral party to be furnished with sea letters or passports, which are to be exhibited as well at sea as in port.

"ART. 15. Vessels of war of either party, visiting the merchant vessels of the other, not to approach within cannon shot, nor send more than two or three men on board, to examine the ship's papers.

"ART. 16. It is agreed, that the subjects or citizens of each of the contracting parties, their vessels, and effects, shall not be liable to any embargo, or detention on the part of the other, for any military expedition, or other public or private purpose whatsoever. And in all cases of seizure, detention, or arrest, for debts contracted, or offences committed by any citizen or subject of the one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

"ART. 17. Vessels, &c. of either party, taken by an enemy or a pirate, and recaptured by the other, to be restored on proof.

"ART. 18. Vessels of either party, driven by stress of weather, &c. into the ports of the other, to be protected, and the persons on board treated with humanity, &c.

"ART. 19. Vessels of war of each party may freely enter and depart from the ports of the other with their prizes.

"ART. 20. Citizens of one party not to take commissions, or letters of marque, from a third power, to act against the other. Neither party to furnish military or naval succor to a third power, to aid it against the other.

"ART. 21. Regulations to be observed in case of war against a common enemy. Vessels of one party, recaptured from an enemy of the other, by a private armed vessel, within twenty-four hours after being taken, to be restored on payment of one-third value of the vessel and cargo; if after twenty-four hours, wholly a prize. In case the recapture should be by a public vessel of either party, within twenty-four hours after the taking, restoration to be made on payment of one-thirtieth, and if longer, one-tenth of the value of vessel and cargo. Proof and surety required before restitution. The legality of prizes to be determined according to the laws of each party, respectively.

"ART. 22. In case of a common enemy, or both being neutral, the vessels of war of each party to afford convoy.

"ART. 23. If war should arise between the two contracting par-



ed from confiscation, though they might be employed for the use of the captor, on payment of their full value. This, we believe, is the only treaty ever made by America, in which

ties, the merchants of either country, then residing in the other, shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects, without molestation or hindrance: and all women and children, scholars of every faculty, cultivators of the earth, artisans, manufacturers, and fishermen, unarmed and inhabiting unfortified towns, villages, or places, and in general all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt, or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power, by the events of war, they may happen to fall; but if any thing is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price. And all merchant and trading vessels employed in exchanging the products of different places, and thereby rendering the necessaries, conveniences, and comforts of human life more easy to be obtained, and more general, shall be allowed to pass free and unmolested; and neither of the contracting powers shall grant or issue any commission to any private armed vessels, empowering them to take or destroy such trading vessels or interrupt such commerce.

"ART. 24. And, to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to each other, and to the world, that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies, or any other parts of Asia or Africa, but that they shall be placed in some part of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are, for their own troops; that the officers shall also be daily furnished by the party in whose power they are, with as many rations, and the same articles and quality, as

contrabands were not subject to confiscation; nor are we aware that any other modern treaty contains this remarkable provision. We are probably indebted to Dr. Franklin for the article. It had long been a favourite subject with him to procure the exemption, from the evils of war, of all persons engaged in private pursuits, or occupations, and to abolish privateering. He was desirous of having similar articles inserted in the treaty with England of '83, and proposed them to Mr. Oswald.

are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with, nor set off against any others, nor the balances due on them be withheld as a satisfaction or reprisal for any other article, or for any other cause, real or pretended, whatever; that each party shall be allowed to keep a commissary of prisoners, of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided; and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature or nations.

"ART. 25. Each party may have consuls, &c. in the ports of the other.

"ART. 26. Favours granted to any other nation, in navigation or commerce, by one party, shall become common to the other, on the same conditions."

The treaty was limited to ten years from the year 1786.

All wars consist in attacks on private property, for there is scarcely any other mode of making a war felt ; few nations have public property within reach of an enemy. If a state, like America, should withdraw the few public ships it has from the ocean, it is difficult to conceive how a war could be conducted against it, for all its trade, occupation, commerce, and manufactures would go on as in time of peace. If the enemy land, the treaty forbids them destroying, and even compels them to live at their own expense. This proposition seems to be incapable of application ; for the distinction between the public and the private property of a nation is a vague one, more especially under a free government ; and, after all, public property, speaking with strictness, even in despotic countries, constitutes a very small portion of the wealth of the state. We do not undertake to say, what effect it would have on the patriotism of the people, to separate them so entirely from the government, as this arrangement would do. But we have great doubts, supposing it all along perfectly practicable, whether this scheme would have any other effect than to make wars perpetual. They should be accompanied with some horrors, at least, to prevent nations from engaging in them too eagerly. As to the particular application of the part, relating to privateers to this country, it can never be the policy of America, *while that system exists among civilized nations*, to debar themselves of the right of issuing commissions to private armed vessels. The country has the means, in time of war, of doing more injury to an enemy by that species of molestation, than any other whatever. Privateering is to be justified as one mode of harassing an enemy, that the customs of civilized nations allow a belligerent to adopt, and it can be defended on the same ground as most of the other practices of war. It is not easy to make a just and sound distinction between captures by private and public armed vessels ; one form of capture is probably as humane as the other. It makes little difference, we imagine, to the enemy's merchantman whether he falls into the hands of a privateer or a frigate. At any rate, we cannot but be amused that

the King of Prussia, a principal conspirator in the partition of Poland and author of various profligate attacks on Saxony, should, nevertheless, manifest such extreme tenderness for the property of private traders; and without a ship himself on the ocean, should take such an interest in the rights of neutrals. In finishing this paragraph, it will occur to every one, that the principal objection to the provisions of the 23d article would be the extreme difficulty of adhering to them.\*

This treaty expired in '96. The United States had no direct trade with Prussia before the year '99; the trade with that part of Germany having been principally conducted through Hamburgh and Bremen. Since '99, we have had occasionally some slight commercial intercourse with Prussia, but it has been greatly interrupted by the wars in Europe, and the continental system. In general, however, the exports from Prussia have exceeded the imports. Prussia, since the last arrangement in 1815, now owns an extensive seacoast, though our trade has latterly much fallen off to that part of the world. It is, at present, on the new footing of reciprocity.

The treaty of '85 was renewed in '99, at Berlin, by John Quincy Adams† on the part of the United States, and, on the part of Prussia, by the Count of Finckenstein, M. d'Alvensleben, and the Count of Haugwitz. This treaty, though a copy, in most of the articles, of that of '85, differed in several respects. The rule, that free ships make free goods, not having been respected during the two last wars, the parties agreed, at the return of peace, to concert such arrangements with the maritime powers, as should, hereafter, secure the navigation and commerce of the neutral. Contrabands were specified, and confined to military arms and stores; the exemption, stipulated in the 16th article of the treaty of '85, on the subject of an embargo, was annulled.

\* It will be seen that in the next treaty made with Prussia in '99, the whole of this stipulation, respecting privateers and the exemption of private trading vessels, was omitted.

† Appointed minister plenipotentiary in June '95.

Vessels were, thereafter, subject to embargoes on the principle of the most favoured nation, and an indemnity was stipulated for all vessels detained for public uses. The original regulation in the 23d article of the same treaty, respecting privateers and merchant and trading vessels, was abolished. This treaty expired, by its own limitation, in 1810. It has not been renewed,—nor have the United States, since Mr. Adams's return in 1801, appointed a minister to Prussia.

The last mission to Prussia seems to have been little required either by the condition of the commerce, or of the political relations of the country; but it was instituted for a purpose, which, though in itself harmless as matters turned out, must, nevertheless, be considered a variation from the direct neutral course of the United States. The renewal of the original treaty of 1785 with that nation was not, in itself, of sufficient importance to render a special embassy necessary; this country never derived any benefits from that instrument, nor could any in the actual state of commerce be anticipated. The mission was political, and, in that view of the subject, cannot, we think, meet with much favour from any reflecting statesman of the present day. Washington, about retiring from the office of President, had just delivered his farewell address, in which he recommended to the people to have as "little *political* connexion with foreign nations as possible." All seemed to feel and acknowledge the force, wisdom and soundness of the maxim, notwithstanding the excitement, produced in one portion of the community by the guaranty of the treaty of alliance. And from his successor, who came into office with the vast benefit of all the experience to be derived from having been associated, in a high station, with General Washington, during the eight years of his administration, an immediate deviation from this course of policy was by no means to be expected. This eminent individual had witnessed the successful operation of the system of neutrality, adopted by the first President, and he was aware of the considerations, that made the proclamation of 1793, necessary, as well as of the

source, whence flowed the troubles and difficulties of that trying time. But in the second year of the second administration, a message was addressed to Congress, in which notions, in regard to foreign intercourse, are developed that were, we believe, as unexpected, as they ever will be considered of hazardous import and tendency. In different parts of this work we may appear to have spoken too fully and with too much emphasis of measures, touching our foreign relations, that were not accompanied with direct, obvious mischiefs; but we cannot separate the domestic from the foreign policy of the government, and, in our judgment, the mutilation, which the prevalence of such opinions will finally cause to the constitution itself, must prove fatal, for they will lay the broad, gradual foundations of a concentration and consolidation of power, that, the only barrier, now existing in the States, will be found, altogether, too feeble to resist. We confess as, upon all occasions of domestic policy, we should adhere to the fair, precise, plain text of the constitution, and admit neither gloss, commentary, nor interpolation, so, in regard to foreign relations, we trust the government will never be seduced by schemes of ambition, or prospects of immediate, temporary advantage, to embark upon this wide, unknown, dark, boisterous sea of alliances, political connexions, or confederacies, by whatever name, nature, or description called, or known.

The message, to which we have alluded, was in these words :

“ Although it is very true, that we ought not to involve ourselves in the political system of Europe, but keep ourselves distinct and separate from it if we can; yet to effect this separation, early, punctual and continued information of the current chain of events and of the political projects in certain relations, is no less necessary than if we were directly concerned in them. It is necessary in order to the discovery of the effects, made to draw us into the vortex, in season to make preparation against them. However we may consider ourselves, the maritime and commercial powers of the world will consider the United States of America as forming a weight in that balance of power in Europe, which

can never be forgotten or neglected. It would not only be against our interest, but it would be doing wrong to one half of Europe, at least, if we should voluntarily throw ourselves into either scale. It is a natural policy for a nation, that studies to be neutral, to consult with other nations, engaged in the same studies and pursuits—at the same time, that measures ought to be pursued with this view, our treaties with Prussia and Sweden, one of which is expired, and the other near expiring, may be renewed.”

The nomination, made in pursuance of the intimation, contained in this document, was confirmed by the Senate, and the necessary appropriation granted by the House; but in both bodies the measure was resisted with zeal and perseverance. A long debate arose in the House of Representatives on the foreign intercourse bill, involving a consideration of the expediency and necessity of this act. A general outline of the remarks of the speakers only has been preserved in the public prints of the day: but we, certainly, are not able to reconcile the sentiments of the able men, who supported the administration, either with the precepts of a rigid, judicious and steady neutrality, or with the rules and maxims of government, now consecrated by the practice and example of Washington. From that period, party heat distorted and confused to some extent almost every discussion, still not a single expression of opinion, or political indication, of any sort has since been observed in the history of this nation, which can raise in the mind of a man (who will now calmly, impartially and carefully examine for himself) a reasonable doubt, both of the consequences of that measure to the administration of the second President, and of the broad, deep, mark of disapprobation, the American people have set upon that and every succeeding endeavour to expand the relations with foreign states beyond the precise bounds, that an honourable, matured and prosperous system of neutrality has firmly and distinctly adjusted.\*

\* Since Mr. Adams' second mission, the U. States, we believe, have had no diplomatic agent at Berlin. In 1819 Frederic Greuhm was accredited as a minister from Prussia, and at present that government is represented here by Mr. Niederstetter, a chargé d'affaires.



## CHAPTER VI.

## TREATY OF 1794 WITH GREAT BRITAIN.

*Confederation no power over Commerce—Commercial conventions with France, Holland, Prussia and Sweden—No trade—Trade to England only important one—Depended on an annual act of Parliament—Policy at variance with Europe—Mr. Adams chosen to St. James—First envoy—Adams' address to King and the answer—Well received—Notes with Lord Caermarthen—Presentation—England refused to make a treaty—Account of violations of treaty of '83—Debts—Interest—Remarks on Navy and Commerce—Symptoms of war in Europe—Pass off—Inscription on gate at Cherson—Confederacy dissolved—Randolph's letter on state of Parties—Hammond, first envoy to this country—Morris—Pinckney—Origin of oppressive acts by belligerents—War between France and England—Provisions contraband—Rules of neutrality—Danger of a war—Executive appoints Mr. Jay to London—Jay's instructions—Decides question of neutrality—Concludes a treaty—Unpopular—Disturbances on account of treaty—Eventually favourable to the United States.*

THE United States, at the close of the war of 1783, had commercial treaties with France, Sweden and Holland, but no trade with either of those countries. The Congress of the confederation were not invested with power to regulate commerce, or to levy imposts, and a proposition, made to the states, authorizing the government to assess a duty of five per cent. ad valorem on imports, had been rejected. The confederacy was adopted for the purpose of carrying on the war, and was, in reality, adapted to few other purposes. The excitements of the contest and the necessity of securing their independence, supported the people in their hardships. But peace left them, if possible, with still greater hardships, and without a single circumstance of excitement. The ex-

ternal pressure, that alone had kept the states united, was removed; and at this juncture there appeared thirteen sovereign, independent governments, bound together nominally in one confederation, each entitled and equally qualified in its own capacity to assess taxes, to establish duties and rates of tonnage, and to open or forbid with each other or with foreign nations, every species of trade or intercourse. America, in a state of colonization, had been permitted to drive only a restricted commerce. The exports were limited to the parent country, and to the least valuable markets of Africa, of the south of Europe, and to the West Indies; though the articles termed in the navigation and subsequent acts, "enumerated commodities," were confined exclusively to Great Britain. The parallel of Cape Finisterre, the boundary of the trade to the north, entirely cut off France, Sweden and Holland; countries with whom, as we have said, America had commercial conventions, but no habits of intercourse. The whole trade to Great Britain, her colonies and possessions, (altogether the only one of any value at that period) rested upon the precarious tenure of an annual act of Parliament.

The course of trade, and of every description of communication with Europe, had formerly been that of a colony. And now become independent, the policy of America could in no way be made to follow in the same current with that of the nations, with whom she was brought immediately to act. Those countries were old and hardened in a system of exclusion and commercial proscription. They held colonies upon whom, according to the fashionable doctrines of the day, not yet entirely exploded, it was just and proper to impose restrictions for the purpose, to use the emphatic words of the preamble to the statute 15 Charles II. "of keeping them (the colonies) in a firmer dependence upon it (the mother country) and" rendering "them yet more beneficial and advantageous to it." On the other hand, the United States having no manufactures at home to protect, or foreign possessions, whose trade it was necessary to monopolize, found themselves at variance on every point with

the systems of the European governments. In their earliest instructions, Congress recommended the adoption of a liberal scheme of commerce, a system now gradually introducing itself through the world, but at the time exceedingly disrelished and condemned by most of the writers on commerce, particularly Lord Sheffield, in a pamphlet, that attracted great notice. And, undoubtedly, without the alarm caused in the governments of Europe by the French revolution, that led them to consider every reform an innovation, we should already have had a much greater freedom of commercial, and, perhaps, also political institutions in the old world. The commercial regulations of these instructions of Congress of 1784 differ little from the doctrines of the armed neutrality, a short time before that period in high repute, but then falling into decay.\*

\* The first administration under the constitution was disposed to maintain the same system. We shall quote a remarkable passage from a report of the Secretary of State for the year '92. "Instead of embarrassing commerce under piles of regulating laws, duties, and prohibitions, could it be relieved from all its shackles, in all parts of the world, could every country be employed in producing that, which nature has best fitted it to produce, and each be free to exchange with others mutual surpluses for mutual wants, the greatest mass possible would then be produced of those things, which contribute to human life and human happiness; the numbers of mankind would be increased, and their condition bettered. Would even a single nation begin with the United States this system of free commerce, it would be advisable to begin it with that nation; since it is one by one only, that it can be extended to all. Where the circumstances of either party render it expedient to levy a revenue, by way of impost on commerce, its freedom might be modified in that particular, by mutual and equivalent measures, preserving it entire in all others. Some nations, not yet ripe for free commerce in all its extent, might still be willing to modify its restrictions and regulations for us, in proportion to the advantages, which an intercourse with us might offer. Particularly, they may concur with us in reciprocating the duties to be levied on each side, or in compensating any excess of duty by equivalent advantages of another nature. Our commerce is certainly of a character to entitle it to favour in most countries. The commodities we offer are either necessities of life, or materials for manufacture, or convenient

Great anxiety naturally existed in America on the subject of commercial intercourse. The commissioners, that made the treaty of peace, were empowered, as has already been said, to conclude a commercial convention. They did not succeed in that object; for Great Britain manifested uncommon reluctance to take any other step in her diplomatic relations with America, than to acknowledge the independence of the country. In the meanwhile, the nation rushed into a most ruinous commerce with England, that in a short time added infinitely to the alarming evils the war and the weakness of the confederacy were daily causing. The very earliest measures were adopted, however, by the government to obtain a formal protection for the trade of the country; and on the 1st of May, ten days only after the ratification of peace, Congress ordered a second commission to be prepared for Messrs. Adams, Franklin and Jay, or either of them, to enter into a treaty of commerce with Great Britain. But this commission appears to have accomplished nothing. A commission of a subsequent date was intrusted to Messrs. Adams, Franklin and Jefferson. We find a letter from them, of March 26, 1785, to the Duke of Dorset, British minister at Paris, informing him that they were authorized to treat with England on the subject of commerce. His reply is dated the same day, and contains the following singular enquiry:—"Whether they were commissioned by Congress, or their respective states, for it appeared to him that each state was determined to manage its own matters in its own way." Mr. Jefferson and Mr. Adams held several conferences in London, in the spring of '86, with Lord Caermarthen, in reference to commercial regulations.

The commission of the year '83 not having succeeded in concluding a commercial convention, John Adams of Massa-

subjects of revenue; and we take in exchange, either manufactures, when they have received the last finish of art and industry, or mere luxuries. Such customers, too, whose demands, increasing with their wealth and population, must very shortly give full employment to the whole industry of any nation whatever, in any line of supply they may get into the habit of calling for from it."

chusetts was chosen in February 1785 minister plenipotentiary to the court of St. James; the first envoy sent to Great Britain by the United States.\* Mr. Adams arrived in England in the spring of the same year, and his first note, dated Bath Hotel, May 26, 1785, is in these words :

"Mr. Adams has the honour to acquaint the Right Honourable the Marquis of Caermarthen, that he is just arrived in town with credentials from the United States of America, and desires to be informed what hour he may have the honour of paying his respects to his Lordship."

"Grosvenor Square, May 27.—Lord Caermarthen presents his compliments to Mr. Adams, and shall be glad to see Mr. Adams this day about one o'clock in Grosvenor Square, or at the office in Cumberland Row about four o'clock, which ever is most convenient to Mr. Adams."

These notes were immediately succeeded by the two following :

"St. James, May 27, '85.—Sir, I forgot to mention to you to day, when you did me the honour to call upon me in Grosvenor Square, that it is customary for every foreign minister to send the Secretary of State a copy of the credential letters, they are directed by their sovereigns to present to his Majesty and the Queen. With regard to the superscription, I find the credentials of the ministers from the States' General of the United Provinces are only addressed, 'Au Roi de la G. B.' I believe I did mention to you, Sir,

\* On the subject of this appointment we have great pleasure, for various reasons, in taking this opportunity to introduce a passage from a letter of Mr. Jay (May 30, 1783) from Paris to the President of Congress:—"It cannot, in my opinion, be long before Congress will think it expedient to name a minister to the court of London. Perhaps my friends may wish to add my name to the number of candidates. If that should be the case, I request the favour of you to declare in the most explicit terms that I view the expectations of Mr. Adams on that head as founded in equity and reason, and that I will not, by any means, stand in his way. Were I in Congress I should vote for him. He deserves well of his country, and is very able to serve her. It appears to me to be but fair, that the disagreeable conclusions, which may be drawn from the abrupt repeal of his former commission, should be obviated, by its being restored to him."

that credential letters are always delivered, sealed, into his Majesty's hands.

"I am, Sir, &c.

"CAERMARTHEN.

"JOHN ADAMS, Esq., &c. &c. &c."

"LONDON, May 28, '25.—My Lord, I have received the letter your Lordship did me the honour to write me yesterday, and have enclosed a copy of the credential letter, I am directed by my sovereign to present to his Majesty. I am so unfortunate as not to have any for the Queen. But I know the sentiments of my country and of Congress so well, as to be sure, that it is not owing to any want of respect to her Majesty;—probably it was merely the want of information, that there ever had been a precedent of it.

"I beg leave to propose to your Lordship, that the superscription should be, to his Majesty George the 3d, King of Great Britain, France and Ireland, Defender of the Faith, &c. If your Lordship should not disapprove of this, I should prefer it to the address of the United States' Provinces, as being more respectful."

Shortly afterwards, Mr. Adams was presented to the King and Queen, and we have it in our power to recite an authentic version of what was said on that remarkable and interesting occasion, as poetical and picturesque, considered as one point of view, both of the past and future, as any thing that has taken place:

"May 29.—This morning Sir Clement Cotterell Dormer, master of the ceremonies, called on me to inform me, that he was ordered to attend me to Court on Wednesday, as he did all foreign ministers at their first presentation." "Agreeably to previous arrangements, the master of ceremonies called on me at one, and accompanied me to the Secretary's office, whence Lord Caermarthen accompanied me to the Palace, and was in a very short time introduced to the King's closet, when with the usual ceremony I presented my letter of credence to his Majesty, and after a few minutes conversation retired. I have only time to observe, that I was introduced with every necessary formality, and received with some marks of attention."

"The master of ceremonies attended me in the anti-chamber, while the Secretary of State went to take the commands of his Majesty. While I stood in this place, where, it seems, all ministers

stand upon such occasions, always attended by the master of ceremonies, the room, very full of ministers of state, bishops and all other sorts of courtiers, as well as the next room, which is the King's bed chamber, you may well suppose, that I was the focus of all eyes. I was relieved from the embarrassment of it by the Swedish and Dutch ministers, who came to me and entertained me with a very agreeable conversation the whole time. Some other gentlemen, whom I had seen before, also came to make their compliments to me, till the Marquis of Caermarthen returned and desired me to go with him to his Majesty. I went with his Lordship through the levee room into the King's closet. The door was shut, and I was left with his Majesty and the Secretary alone. I made the three reverences, one at the door, another about half way, and the third before the presence, according to the usage established at this and all the northern courts of Europe, and then addressed myself to His Majesty in the following words:

"Sir—The United States of America have appointed me their minister plenipotentiary to your Majesty, and have directed me to deliver to your Majesty this letter, which contains the evidence of it. It is in obedience to their express commands, that I have the honour to assure your Majesty of their unanimous disposition and desire to cultivate the most liberal and friendly intercourse between his Majesty's subjects and their citizens, and of their best wishes for your Majesty's health and that of the royal family. The appointment of a minister from the United States to your Majesty's Court will form an epocha in the history of England and America. I think myself more fortunate than all my fellow citizens in having this distinguished honour to appear in your Majesty's presence in a diplomatic character, and shall esteem myself the happiest of men, if I can be instrumental in restoring an entire esteem, confidence and affection, or, in other words, the good old nature and the good old humour between people, who, though separated by an ocean and under different governments, have the same language, a similar religion, and kindred blood. I beg your Majesty's permission to add, that, though I have some time before been intrusted by my country, it was never in my whole life in a manner so agreeable to myself. The King listened to every word, and heard me with dignity, but with apparent emotion;—whether it was the nature of the interview, or my sensible agitation (for I felt



more than I did or could express) that touched him, I cannot say, but he was much affected, and answered me with more tremor than I had spoken with."

"Sir,—The whole of this business is so extraordinary, that the feelings you discover on the occasion appear to me to be just and proper. I wish, sir, to be clearly understood, before I reply to the obliging sentiments you have expressed in behalf of the United States. I am, you may well suppose, the last person in England, that consented to the dismemberment of the empire, by the independence of the new states, and, while the war was continued, I thought it due to my subjects to prosecute that war to the utmost. But, sir, I have consented to the independence, and it is ratified by treaty, and I now receive you as their minister plenipotentiary; and every attention, respect and protection, granted to other plenipotentiaries, you shall receive at this court. And, sir, as I was the last person that consented to the independence of the United States, so I shall be the last person to disturb, or in any way infringe upon, their sovereign independent rights; and I hope and trust, that from blood, religion, manners, habits of intercourse, and almost every other consideration, the two nations will continue for ages in friendship and confidence with each other."

In the course of the next month, Mr. Adams proceeded directly to the object of his mission. He held several conferences with the Secretary of State; and, early in the discussions, appears to have imbibed the opinion that the prospect of a satisfactory arrangement was altogether hopeless.

"Though I have been received here," the minister observes in a letter June 25, "and treated with the distinction due to the rank and title you have given me, there is, nevertheless, a reserve, which convinces me, that we shall have no treaty of commerce until this nation is made to feel the necessity of it. *Cui bono?* they cry; to what end a treaty of commerce, when we are sure of as much American trade, as we have occasion for without it."

"July 27. It is very apparent that we shall never have a satisfactory arrangement with this country until Congress shall be made by the States supreme in matters of foreign commerce, and treaties of commerce, and until Congress shall have exerted that supremacy with a decent firmness."

"August 6, '85. The spirit of the times is very different from that which you and I saw, when we were here together in the months of October and November '83. Then the commerce of the United States had not fully returned to these kingdoms. Then the nation had not digested its system, nor determined to adhere so fully to its navigation laws. Now the boast is, that our commerce has returned to its own channels and can flow in no others. Britain has ventured to begin commercial hostilities. A jealousy of a naval power is the true motive, which actuates them. They consider the United States the most dangerous rival they have in the world. They think they foresee, that if the United States had the same fisheries, the same carrying trade and the same market for ready built ships, they had ten years ago, they would be in so respectable a posture and so happy in their circumstances, that their own seamen, manufacturers, and even merchants, would hurry over to them."

In July Mr. Adams passed through the ceremony of communicating to the British government an outline of a commercial convention, embracing the usual stipulations of our treaties, and an article forbidding the practice of impressment. We mention this fact for no other purpose than to preserve the course of the narrative. It was not to be expected that in 1785, a great impression could be made on England by propositions concerning free ships—free goods—the flag and the property, or exemption from confiscation of contrabands. Again, in August the American minister went over the whole business of a commercial treaty with Mr. Pitt, just then brought into public affairs in a most conspicuous manner, and afterwards so celebrated as the premier of Great Britain. This examination included the entire discussion of the questions of debts, interest, colonial trade, negroes, outposts and boundaries. In the course of the negotiation, the favourable opinion Mr. Adams had formed of Mr. Pitt in the outset of the affair, yielded to the influence of considerations and circumstances, from which a British minister, in the actual condition of that government, could hardly be expected to disencumber himself. We extract a single remark. "Mr. Pitt commenced his career with sen-

timents rather liberal towards the United States ; but since he has been prime minister, he has appeared to have given ear to the Lord Chancellor (Thurlow) Lord Gower, Mr. Dundas, Mr. Jenkinson, so much so, as to have departed from his first principles."

Mr. Adams, by no means, concealed the just disappointment he suffered, in having failed to conclude some sort of commercial convention. The mortification was the more severe and vexatious, from the knowledge he fully possessed how extremely his own country was depressed, in consequence of the uncertain condition of its trade. We think, however, that no great censure ought fairly to be attributed to the European states for declining to enter into diplomatic arrangements with the confederacy ; nor are we disposed to acknowledge the soundness and expediency of the retaliatory system, recommended by the American minister. In the state of the country retaliation was the very last weapon, to which the United States should resort.

" In short, every article which can support a shipwright, a ship, a seaman, a whaleman, or cod fisherman, a rum distiller or a sugar house, appears to be struck at with a deadly blow, and a settled plan to deprive us of all our carrying trade, the carriage of our own produce, as well as theirs, appears decidedly to be adopted by the present ministry, and no party, no man has yet dared to declare himself of another opinion. You must exclude and prohibit in your turn, and confine your exports to your own ships."

This is not even good advice for a country, possessing some portion of capital ; but in 1785 to what a condition would prohibition and exclusion have reduced us ? The foreign trade of that day was the only thing that gave a start to our resources, and relieved us gradually from the terrible pressure of our own poverty, embarrassments and disaffection of a thousand kinds. We have much greater satisfaction in reciting the early opinions, and in some degree predictions of Mr. Adams on a subject, always of uncommon importance, now of extreme interest, and which, for a time, was far from possessing the favourable countenance of the

nation. The sentiment relates to the navy, delivered in the year '85, and though, savouring somewhat of a sanguine temperament, has a solid foundation in the native strength and habits of the people. The reader will also observe, that this brilliant institution owes its existence to a system of commercial intercourse, precisely opposed to the one recommended in the following passage: "If we should get over our aversion to monopolies and exclusions, and adopt the selfish, unsocial principles of the European nations, particularly France and England, we should astonish the world with a navy in a few years, not more than eight or ten, equal, perhaps, to the third maritime power in Europe. European statesmen know it better than we do, and dread it more than we desire it."

But the English government does not appear to have paid much attention to America the first five or six years after the peace. They were occupied, entirely, with domestic affairs;—in renewing their ancient alliances with Holland, Prussia, and other governments of the continent, disturbed by the revolution war—in concluding a commercial convention with France—in regulating the trade of Quebec and Ireland—and, besides the customary topics of India and the catholics, two unexpected and very laborious subjects, the establishment of a regency, and the impeachment of Warren Hastings, engrossed a great deal of time and deliberation. England, taking advantage of the general calm, to repair, as rapidly as she could, the disasters of the war, (not, to be sure, preparatory to the tremendous contest, in which she was about to be involved, far more terrible, and in the end fortunate for her, than the one from which she had just emerged,) saw America struggling, and at one time nearly overpowered, with her own domestic difficulties. At this period, it could not be said the American revolution was consummated. Europe, probably, supposed this country was destined to go through the agony of a civil war, a condition of society, heretofore a necessary consequence of any great change in the form of government. But this evil America escaped, either because the country was exhausted,

or from the character of the people, long accustomed to self-government, and not bewildered by independence. The interval, from the peace to the establishment of the present federal constitution in 1789, is properly the second period in the history of the revolution, during which all the elements of a civil war were consumed in the inefficient but harmless conflicts of the confederation with the states.

The treaty of peace, much as it effected, still left many causes of great uneasiness particularly harassing to the American government and people, and to that portion of the subjects of the mother country, who had entered into her armies, or abandoned the colonies and their cause. The British government took their part, though at first without the appearance of much zeal or irritation;—sent no minister to America during the time of the confederation; refused to agree to any commercial arrangement whatever; and contented itself with the barren but provoking satisfaction of holding, contrary to the treaty, the north and western ports. To make all the objects of Mr. Adams' mission intelligible, it will here be necessary (before proceeding on that topic) to give a brief account of the difficulties in fulfilling the terms of the treaty, that arose between the United States and Great Britain, only removed finally by the treaty, that makes the subject of this chapter.

The ninth article of the act of confederation and perpetual union conferred upon the United States, in Congress assembled, the sole right and power of making treaties. This power, though limited and specific, is full and perfect in its kind. In making treaties, the states did not possess a concurrent jurisdiction, though a treaty properly made, like any other act the Congress were authorized to perform, was a part of the law of the land, a contract with another power, competent to make such contract. The same body, to whom the confederation confided the power of making treaties, necessarily possessed the right of explaining, interpreting and enforcing them. The states could not make treaties; they could not judge of them. A treaty, when duly ratified, being part of the law, all doubts, that arose respecting it between individuals, became simple judicial questions. But there was then in the country no court

erected by the confederation. The duty, therefore, of interpreting and enforcing the provisions of a treaty, under the general restriction, just mentioned, fell to the state courts. This was the situation and condition of the government; this the extent and nature of its authority in regard to foreign relations, conferred upon it by the celebrated articles of confederation and perpetual union. Congress faithfully and punctually exercised, in regard to the British treaty, all the authority with which it was legitimately invested. On two occasions, the first in '83, and again in '87, it unanimously recommended to the states, and it could do no more, (the British commissioner was aware of this fact when the treaty was made) to comply speedily and exactly with that portion of the instrument that concerned creditors and royalists; though the article was no part of the law of the land, for it contained only a recommendation. But the states did not yield an immediate attention even to the recommendation; and, in vindication of themselves, they said that grievous infractions of the treaty were committed by the other party,—that the garrisons were not withdrawn with convenient speed, the English still holding the posts of Michilimachinac on lake Michigan, Detroit, Fort Erie, Oswego and Niagara, Oswegatchie on the St. Lawrence, Point au fer and Dutchman's Point on Lake Champlain,—that British officers exercised jurisdiction over the country in the vicinity of those posts—and that a large body of negroes, the property of American citizens, had been embarked at New-York against the special remonstrance of the American commissioners. Indeed, Lord Caermarthen in a letter, dated February 28, '86 to the American minister, directly admitted that the fourth article had been violated; and fully justified the proceeding on the ground, that infractions had been committed by the Americans, particularly as it respects the recovery of debts.

But no foundation appears to exist for the charge, at that time repeated with great earnestness, and, indeed, one of the principal sources of complaint on the part of England, that the integrity and independence of the American courts were obnoxious to reproach. The uprightness of their decisions can

by no means be impeached. There was undoubtedly a great popular excitement against British creditors, which in the end extended itself to creditors of all descriptions. This circumstance deterred some individuals from bringing actions. All the evil consequences men feel, who are compelled from duty or situation to pursue unpopular measures, unquestionably befell British creditors, just after the peace; they suffered all the inconvenience, met with all the delays and obstacles that a highly heated public sense could oppose to them. This was not a violation of any provision of the treaty: it was an evil, along with many others, the war had brought upon them. But unless the court or the creditor was overawed and arrested in their proceedings by popular tumults, or threats, or commotions, we are not aware that any infractions of the treaty can justly be complained of. Any man who undertook to recover his lawful debts immediately after the peace, certainly rendered himself exceedingly unpopular. This state of things produced a serious rebellion in one part of the country. It was also impossible, that the article concerning the recovery of debts could have been immediately fulfilled by the Americans. The distress for money was extreme; it had been so for three years before the termination of the war. The country rushed instantly, and with great avidity, into an extensive foreign commerce, which did but increase the mischief. The opposition to paying the foreign as well as domestic debts, undoubtedly arose, in a great measure, from the lamentable, and apparently increasing poverty of the people. It was not an opposition by any means directed exclusively against the treaty; but all persons in the situation of creditors suffered equally, and for similar reasons. At the same time the foreign creditor was more obnoxious to popular clamour; for not only the odium of the war was attached to him, but the demands of this class of persons were very great. And they were pressed with a zeal which to the debtor appeared somewhat harsh and unreasonable, though the foreign merchant probably felt very differently on the subject. At any rate, it is difficult to blame men,



who strive to get their just debts in the form prescribed by law.\*

\* The strict law of nations authorizes the confiscation of debts and all other incorporeal things belonging to alien enemies. (Vatt. vol. ii. p. 323.) The modern practice suspends, but does not annul, the right of an enemy to a debt. "It is a principle of law," says Sir Wm. Scott, (1 Rob. Rep. 200.) "that during a state of war, there is a total inability to sustain any contract by an appeal to the tribunals of the one country, on the part of the subjects of the other. In the law of almost every country, the character of an alien enemy carries with it a disability to sue or to sustain, in the language of the civilians, a *persona standi in judicio*. The peculiar law of our own country applies this principle with great rigour. The same principle is received in our courts of the law of nations; they are so far British courts, that no man can sue therein, who is a subject of the enemy, unless under particular circumstances that *pro hac vice* discharge him from the character of an enemy; such as his coming under a flag of truce, a cartel, a pass, or some other act of public authority that puts him in the king's peace *pro hac vice*."

"This short statement sufficiently testifies what is the law on the subject of withholding the debt during the war. The following decision will evince, what is the law on the subject of restoring the debt at the return of peace. A petition came on in the Court of Chancery in the matter of Boussmaker, a bankrupt, praying that the petitioner might be admitted to prove, under the commission, a debt which the commissioners refused to admit, upon the objection, that the creditors, applying to prove, were alien enemies. The Lord Chancellor explained the distinctions of the law and its principles on this important question, whether the right of an alien enemy was destroyed or only suspended by war. 'If this,' said his Lordship, 'had been a debt, arising from a contract entered into with an alien enemy during war, it could not possibly stand; for the contract would be void; but if the two nations were at peace at the date of the contract, though, from the time of war taking place, the creditor could not sue, yet the contract, being originally good, upon the return of peace the right would revive: it would be contrary to justice, therefore, to confiscate this dividend. Though the right to recover is suspended, that is no reason why the fund should be divided among the other creditors. The point is of great moment, from the analogy to the case of an action. The policy of avoiding contracts with an enemy, is sound and wise; but where the contract was originally good, and the remedy is only sus-

It now remains to speak of interest, another subject of complaint, on the part of the British. It was the custom of the English merchant before the war, to allow the American one year's credit, and, after the expiration of that time, interest was charged. The treaty made no provision for interest; it refers only to *bona fide debts*, and they remained in their ante bellum state. It rested, therefore, with the courts alone, whether interest should be allowed. Wherever

pendent, the proposition, that therefore the fund should be lost, is very different." Great Britain did not meet her colonies in war as she would have met an independent European power. Some individuals were declared rebels, and a price was set upon their heads in public proclamations. Others, and in considerable numbers, joined the English, and waged a cruel warfare against their own countrymen. The nature of this contest would, therefore, have justified recourse to extraordinary means for carrying it on. A peace to an independent nation, even when it is discomfited, seldom costs more than a colony or a few square miles of frontier. But peace to the Americans without independence, would have been annihilation. If England had succeeded, the laws of war would have justified her, not only in punishing the principal authors and actors in the scene, but in confiscating their property, in levying the expense of the contest upon the colonies, and in subjecting them to great disabilities in future. To escape the infinite evils of such a deplorable condition, the United States would have found ample apology in adopting many severer measures than in an ordinary war between two independent nations would have been tolerated. The estates of the royalists were confiscated. No blame can be attached to this proceeding. The same reasoning does not at all apply to the "debts," but different considerations would, perhaps, have warranted the confederation in refusing to make provision for them. We think, however, that the state legislatures possessed no right whatever to annul or confiscate debts due from their own citizens to the *bona fide* enemy or British subject. All the rights and powers appertaining to the acts of war, peace, or of treaties, were confided to the United States, in Congress assembled. To confiscate the property of an enemy, the subject of a foreign government, is, therefore, an act of sovereignty, and in regard to an enemy, the states in their separate capacities had no sovereignty. The thirteenth part of a nation cannot exercise a power, which belongs only to the thirteen parts united."

it entered expressly into the contract, it, of course, was paid ; it was part of the bona fide debt. If the government could not confiscate the debt, they could not confiscate the interest. But in other cases, it was the duty of the jury to judge if war, or other circumstances, would justify the withholding of interest. The war was one of necessity, and it was thought by those who waged it, a just defence of their precious rights, a measure to which they resorted only in the last extremity. During hostilities, the country itself, was not only exposed to the very worst evils of that state of things, but was debarred from the whole of its foreign commerce ; it was left in a condition of extreme poverty. Should interest, therefore, be allowed on a debt, that could not be paid, not solely on account of the poverty of the debtor, but in some degree on account of the circumstances that led to that state of poverty ? Even intercourse between the creditor and debtor was forbidden by the acts of the British Parliament. Lord Caermarthen said in conversation that, by the construction of the law of England, it was high treason in a creditor of Great Britain to receive a remittance from his debtor in America during the war. In assessing interest, therefore, the circumstances attending the war and the state of the country after the peace, might justly be taken into the account, and mitigate the amount allowed. Juries were compelled to exercise a discretion in apportioning it. The law, itself, in all countries and the customs of merchants contemplate and exact a variety of exemptions. They are all founded in justice and common sense, and present an additional reason why such cases, as are not accompanied with similar conditions or circumstances, should not be entitled to equal privileges. We confess we are not of the opinion that war necessarily stops interest amongst traders or merchants, when for a great number of years it has been the custom to allow it ; and if in ordinary warfare, it has become the practice of civilized people, whatever may be the law of nations, not to confiscate debts due to individuals, there appears to be no good reason for confiscating the interest, when it is equally the practice of such people to allow it in their intercourse with each other.

Having already gone at greater length into the violations of the treaty of 1783 than we intended, we shall spare the reader the details of the intricate question, which government was guilty of the first violation. But the correspondence on this subject was attended with no other result than to confirm the parties in their original impressions. England refused to evacuate the posts till all the impediments to the recovery of debts were removed, and refused to pay for the slaves carried off by Lord Dorchester on the ground, that as slaves were personal property by the laws of the states, they had the same right to them as to any other article of personal property, taken in the course of the war.\*

Mr. Adams still remained at the court of St. James, but no progress was made in the negotiation, nor did the British government return the customary diplomatic courtesy of sending a minister to the United States, though it was thought necessary to give reasons for this seeming negligence. His Lordship (Lord Caermarthen) told me yesterday (June 1786) "that a minister plenipotentiary will certainly be sent to Congress;—that it was not from any coldness or want of respect for the U. States that it had not already been done, but merely from the difficulty of finding a proper person; that he had received many applications, but generally from persons, he was sure, would not be agreeable to us." Congress again, in '87, sent instructions to their minister to conclude a convention with England. The substance of part of these instructions was afterwards incorporated into the treaty agreed on by Mr. Jay.

The entire inactivity and apathy of Mr. Adams' position were, in the autumn of '87, relieved by some slight warlike symptoms in Europe, which, for the moment, passed off in menaces, but the train was laid. It is quite remarkable, how singularly the American and French Revolutions were combined, and upon what highly charged mines stood the

\* Before Bryan Edwards' act of '97, to repeal the act making negroes, "real assets," slaves in all the British West India islands were chattels.

negotiators of the general peace of '83. The former was certainly disconnected with any European causes or movements ;—it sprung solely from the colonies themselves ; but the French Revolution belonged to a regular series, and formed the second event in that course and progress of human affairs. The distant and faint approaches of the war were distinctly discerned, and, as is the case in most terrible calamities, there were moments, when the fatal signs disappeared, and men persuaded themselves, that they had yielded too hastily to a propensity, somewhat common to human nature. In 1787, the Parliament of Paris cried aloud for the States General, dissensions, accompanied with blood-shed, broke out in Holland,\* and the ambitious designs of Catharine on Turkey developed themselves. On a triumphal arch at Cherson in the Crimea, under which the Empress and her oriental train passed in their gorgeous progress into the East, Potemkin caused to be inscribed,—“This is the road, that leads to Byzantium,”—an inscription, that a Roman might well have written ; and though that invisible, indescribable agent, the balance of power, has, hitherto, stood with a flaming sword on that highway, yet, we believe, the legend of the arch at Cherson has disturbed the dreams of every crowned head in Europe from that hour to the present.

\* No doubt can exist that these disturbances were fermented by France. We have met with a letter (March 15, 1786,) from M. de Vergennes to the French minister at the Hague, M. de Verac, perfectly explicit and satisfactory on this head ;—it is as follows : “The King will concur, as far as he can, towards the success of this matter, and you will request on his part, the patriots to communicate their plans, views and wishes ; they may rely on his protection ; they may depend on this the more, as we do not pretend to dissemble, that if the stadtholder recovers his former influence, the English system will not fail to prevail. The King authorizes you to act in concert with the patriots. It is to be presumed that this language, supported with energy, will impose on the audacity of the englomanians, and that the Prince of Nassau will apprehend some risk by provoking the resentment of his Majesty.”

In October 1787 Mr. Adams wrote to the Government,—  
“It is my duty to be explicit on this subject (the prospect of a war in Europe) and to say, that though the British Government may pretend and even sincerely endeavour to avoid a quarrel with the United States, at the commencement of the war, yet if they should obtain any signal success at first, which is not improbable, there will arise such a spirit of domination in the nation as will stimulate hostilities against us.” The warlike preparations of France and England were discontinued the same autumn, but the flights of the raven were still a sinistra cornu, and those fearful indications, portending terrible disasters, so well known to people, who live in countries, subject to great natural convulsions, were observed all along the political horizon. At length, the sides of the earth opened, and this country, relieved from the dangers of war, began her great course of prosperity.

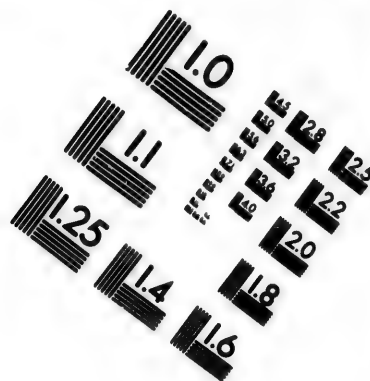
Having brought Mr. Adams' mission to a close, we shall give an account in his own words of his last acts in England—

“Dec. '87—No answer has yet been made to any of my letters or memorials to the minister, nor do I expect that any thing will be done, while I stay. There are reports of an intention to send a minister to us, and a Mr. Liston, now at Madrid, is mentioned. But nothing has been said to me on the subject for some time.”

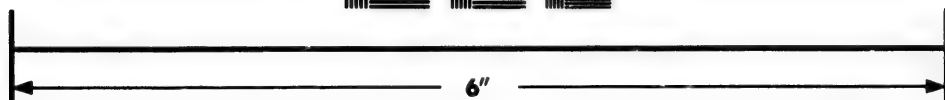
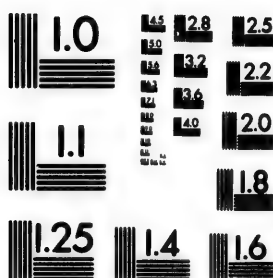
“Feb. 1788—At the last conference, Lord Caermarthen expressed a wish, that this country had some sort of a treaty of commerce with the United States, that it might no longer be necessary to take new measures from time to time. His Lordship also said, “I presume, Mr. Adams, that the states will immediately adopt the new constitution. I have read it with pleasure—it is well drawn up.” All this was to signify to me, what has all along been intimated, that there is not, as yet, any national government, but as soon as there shall be, the British Court will treat with us. On this subject, France and Holland furnish as many arguments as England. If that constitution is not adopted, Mr. Jefferson must soon follow my example, and return home, and what will be the consequence of all the clamour of all the officers in France, who are creditors,







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of all the notables, who may be pleased to cast reflections, and of all our creditors in Holland, for want of payment of interest and principal, as they become due, must be left to every American citizen seriously to consider."

"Feb. 21, '88—Yesterday I had my audience of leave of his Majesty. The substance of my address to his Majesty was no more than a renewal of assurances, in behalf of the United States, of their friendly dispositions, and of their continual desire to cultivate a friendly and liberal intercourse of commerce—thanks for his protection and civilities of his Court, and good wishes of prosperity to his Majesty and his Royal Family, his subjects and dominions. The King's answer was in these words,—“You may, with great truth, assure the United States, that whenever they shall fulfil the treaty on their part, I, on my part, will fulfil it in every particular. As to yourself, I am sure, I wish you a safe and pleasant voyage, and much comfort with your family and friends.”

We have now reached the period, when the confederation was about to be dissolved. In the way of a treaty, nothing was done with England by that body after 1783, and we shall see, that was, in reality, the last treaty concluded by the confederation with any European state. The Federal constitution was established in the year '89 with such powers as necessarily removed most of the objections made to the confederation, though this circumstance does not appear to have produced any effect on Great Britain. That government, perhaps, thought it prudent to wait till the experiment of the stability of the second union was, in some degree, tried. We cannot suppose England was still indifferent to a commercial arrangement, though it will readily occur, that just at the same moment a revolution was terminated in the new world, another, that led to a more immediate and extensive temporary derangement of society, broke out in one of the most accomplished nations of the old. It seemed doubtful in which of these Revolutions Great Britain was most interested. As our relations with England were more affected than with any other power by the establishment of the Federal Government, we shall take this opportunity to introduce, from a letter of the Secretary of State,

Mr. E. Randolph, written in August 1794 to one of our ministers abroad, some general remarks, on the political state of things in this country, during the second term of the first administration :

"The parties, which originally sprung from the constitution, when first proposed for discussion, seem to have been long ago extinguished, and the names of federalist and antifederalist are hardly ever pronounced to signify existing divisions of sentiment. But party, itself, cannot be said to be effaced. Some leading men entertain deep rooted suspicions of others ; these appear in their conduct and declarations, mutual charges of designs to reduce the government to impotency, and to exalt it to a very high tone, are too often heard, and a geographical distinction begins to prevail between the political opinions of the South and North. Its issue cannot be foreseen : the particulars and names, connected with these jealousies, and the charges of improper designs on the one side and the other, you will not expect me to specify. I have ventured to say thus much, merely because you ought to know it, and because this information will serve as a clue to many points of intelligence, which may reach you. I will only add, that it would be a source of happiness to me, if I could persuade myself, that parties in a *combined* Government like ours, would be, as they are in some separate Governments, nothing more than sentinels over each other, and incapable of convulsing the machine."

"The energy of the Government is considerable,—confidence, in the integrity and wisdom of Mr. Washington is, of itself, a bulwark to his administration, although it has been often criticised and roughly handled. But in the Legislative acts, and particularly in those, which authorize the President to draw forth the militia in case of insurrection, and the land and naval forces in certain other cases, he possesses considerable resorts of power."

"Our revenues, not a shilling of which are drawn from a land tax, are adequate to all the objects, for which they have been collected, whether we contemplate the stipulations for the foreign debt, the domestic debt, or other articles of internal expenditure. Punctuality in payment has rendered a just claim on the United States estimable in the eyes of every body. Our stocks, indeed, fluctuate, as the stocks of every other country ; but their stability is evidenced in their very fluctuation. For notwithstanding the great distance between the

price, to which they were once by various artifices inflated, and to which they once fell, must have impressed the world very unfavourably—notwithstanding at every session of Congress hostility is shown to the funded debt—notwithstanding immense bankruptcies have occasionally brought immense quantities of it to market, those, who could afford to live upon the interest of their capital, have been extremely easy in having their property vested in stock—In short, the funded debt is, in my opinion, as stable as the Government itself.”

“At the time, when Mr. Genet was in his inflammatory course, he prompted the erection of certain societies, called democratic. No doubt he was led to the idea by the remembrance of those institutions, which have so efficaciously turned the wheel of French politics. At first, little notice was taken of these democratic societies, but they have certainly since multiplied, and, with great censorial boldness, have struck at men and measures. By what means they have increased in number and vigour is a matter of speculation, some thinking, that they have been fostered by the apprehensions, which have been expressed of them; others, that the progress of public discontent has produced the effect; others, that the pride of being guardians of liberty has enlisted many in the corps. It has been, even, expressed by some intelligent men, that sooner or later they will shake the Government, and it is supposed that some disquietude has been caused by their influence. It is supposed by others, equally intelligent, that their right to assemble cannot be questioned; that although, while Government is clearly in the hands of the people, who may mould it as they will, no self constituted body should undertake to direct its movements—the people, if happy, will check their excesses. Another description of men go further, and frequently urge in argument the operations of the democratic societies, as reasons for adding force to the executive arm.”

Mr. Adams, having been elected Vice President under the new constitution, left London, and was succeeded in that mission in 1789, by Gouverneur Morris of New Jersey, as commissioner. In the course of the year '91, George Hammond arrived in this country, as minister plenipotentiary from Great Britain. Mr. Hammond was the first diplomatic agent sent by England to America, but he was not provided

with powers to conclude a definitive arrangement. He was merely authorized to discuss and adjust the principal points, preliminary to a final settlement. This limited power was matter of just complaint. In '92, Thomas Pinckney, of South Carolina, was appointed Minister Plenipotentiary to Great Britain. This period is rendered exceedingly important in the diplomatic history of the country by the extraordinary condition of Europe. It was the beginning of a system of blockades, and oppressive acts committed by the belligerents, that, together with incalculable mischief to the trade of the United States, inflicted a serious wound upon the prosperity of the country, and in the end led, after an interval of nearly twenty years unprofitable negotiation, to a war with Great Britain. We shall confine ourselves in this chapter solely to the proceedings of that government; the public acts of France, being mentioned in their proper place.

In the spring and summer of '93, Great Britain, Russia, Spain, Prussia, and the emperor of Germany, made a treaty for the purpose, among other things, of closing their ports, "and prohibiting the exportation of all military or naval stores, corn, grain, and provisions from their ports, for the ports of France." They further engaged, "to take all other measures in their power for injuring the commerce of France," to unite all their efforts "to prevent other powers, not implicated in this war, from giving, on this occasion of common concern to every civilized state, any protection whatever, directly or indirectly, in consequence of their neutrality, to the commerce or prosperity of the French, on the sea or in the ports of France." The only one of these powers, possessing, at all, the means of executing this treaty on the ocean, was Great Britain. And whether in retaliation of the French order of May 9th of the same year, or for purposes mentioned in the treaty above referred to, that government issued, on the 8th of June '93, additional instructions to all public and private armed vessels under its flag. We shall give the substance of this order:—

"It shall be lawful to stop and detain all vessels loaded wholly,  
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or in part with corn, flour, or meal, bound to any port in France, or to any port occupied by the armies of France, and to send them to such ports as shall be most convenient, in order that such corn, meal, or flour may be purchased on behalf of his majesty's government, and the ships be released after such purchase, and after due allowance for freight, or that the masters of such ships, on giving due security, to be approved of by the court of admiralty, be permitted to proceed to dispose of their cargoes of corn, meal, or flour, in the ports of any country in amity with his majesty."

A question immediately arose on this instruction, not only whether provisions were contraband of war at all, but whether the doctrine could be applied to a whole country, particularly, one of the extent of France. This discussion, in the actual circumstances of the United States, whose exports at that period consisted so much in the produce of their own soil, assumed an uncommon degree of importance. The articles, heretofore laid down as contraband of war, were not numerous;—in most treaties they are specifically enumerated, and by writers on the laws of nations, have generally been confined to the particular object of carrying on war,—such articles as come under the general denomination of military stores. These have increased in number as the art of war has become more perfect; but the variety and quality depend on conventional law, and not on the primitive laws of nations. Neither does the interest or policy of nations indicate contrabands with certainty; for the policy of nations is seldom permanent. On the other hand, treaties contain only the regulations of states that are parties to them. And as to these instruments, it is to be observed, that treaties of an ancient date do not mention specifically merchandise that shall be denominated contraband. But, from about 1650,\* there are, we believe, few treaties on commerce and navigation, which do not prohibit the carrying of military or war-like weapons to a port or town of the enemy of one of the contracting parties. This prohibition had become, by that time, matter of very general inter-national law, and was in-

\* Martens.



troduced in a variety of shapes and under numerous modifications. It is, also, evident that provisions were early made a subject of conventional law; a fact at once ascertained by examining the collection of treaties. But it is equally evident that they are far, indeed, from being placed on the same footing as military or naval stores, though in the celebrated treaty of Utrecht, in 1713, between France and England, "naval stores even were declared free of war." On this occasion the conduct of England, both on account of her power on the ocean, and as having been the author of the instructions of June 8th, is particularly worthy of notice. We have treaties on record between that state and the United Provinces in 1645,—with France in 1667 and 1668,—with Spain in 1713,—with Denmark in 1782,—and with Russia in 1804,—peculiarly the last act of the second armed neutrality, in which provisions are by name excluded from the list of contraband.\* The authority of England is, therefore, in itself sufficient to prove that provisions are not rigidly contraband by conventional law. In the ordinary incidents of war, provisions form only an article of trade,—a very important one, it is true; but there would seem to be almost as much propriety in subjecting three-fourths of the whole trade of neutrals to the same liabilities. Every commodity, employed in the manufacture of clothing, may, on the same ground, be declared a contraband. Indeed, such is now the perfection of the art of war, such a vast variety of articles enter into the proper *disposition* of a military armament, we know not what limit could be assigned to this description of merchandise. We are well aware that contrabands cannot be specifically defined with such distinctness in treaties as to meet all possible cases.

"The catalogue of contrabands," says Sir William Scott, "has varied very much, and, sometimes, in such a manner as to make it very difficult to assign the reason of the variations, owing to particular circumstances, the history of which has not accompanied the history of the decisions." But the definition appears broad

\* Martens.

and liberal enough, that an article is contraband of war, which can immediately be employed for the purposes of war. "The king having, by his prerogative, the power to promulgate who are his enemies, is bound to watch over the safety of the state; he may, therefore, make new declarations of contraband, when articles come into use, as implements of war, which were before innocent; this is not the exercise of discretion over contraband; the law of nations prohibits contraband, and it is the *usus bellici*, which, shifting from time to time, make the law shift with them. The greatest difficulty seems to have occurred in the instance of provisions, which have not been held universally contraband, though Vattel admits that they become so on certain occasions, when there is an *expectation of reducing the enemy by famine*. In modern times, one of the principal criteria, adopted by the courts for the decision of the question, whether any particular cargo of provisions be confiscable as contraband, is to examine whether those provisions be in a rude or in a manufactured state. For all articles, in such examinations, are treated with greater indulgence in their native condition, than when they are wrought up for the convenience of the enemy's immediate consumption."

Latterly the practice, when asserted at all, has been undoubtedly a more mitigated one, a certain proof the belligerent was not wholly confident of his right to confiscate. The belligerent has exercised the right of pre-emption only,—a right of purchase, with a reasonable compensation to the individual, whose property has been diverted by the act of the belligerent, from its original destination. This is a less evil than absolute confiscation, but is attended with great inconvenience and distress to the neutral. Separate from the circumstance of having the enterprize disturbed or defeated, the neutral is compelled to accept such a price for his provisions as the belligerent may choose to allow. If the belligerent believes he is exercising a just right of war in arresting the neutral, he may, on the same presumption, refuse to allow such a price as the market of the port, to which he was bound, might indicate. That would probably be a high price, caused by great suffering, perhaps even famine. Still, the consideration of this price may be the only thing

that induces the neutral to undertake the voyage. Another difficulty will arise concerning the character of the port to which the vessel is bound. This should justly have great weight on the character of the cargo. The port may be one of general commerce; and the provisions may not be intended for military uses. Still, the cargo is at the mercy of the belligerent, and whether, subject to the right of pre-emption or that of confiscation, the belligerent will exercise his discretion in judging.

This is the right of preemption, considered as applied to a single port or station. But in the instructions of the 8th of June, provisions bound to any port of a vast territory, were held subject to the same right on the part of the belligerent. There can be but one ground for asserting this pretension, a well founded expectation of reducing a whole country to terms by means of famine; an idea formerly very general, but after the experience of the last thirty years, few persons, we presume, imagine it is now practicable to starve an entire nation. The experiment has failed even in relation to small islands. As it respects the particular state against which the instructions were directed, no undertaking could be more extraordinary or visionary; one of the richest, best cultivated, most fertile, and most extensive countries of the old world, with a large population, exceedingly temperate and industrious, surrounded by other countries equally fertile and productive,—a country, where provisions have always been remarkably cheap, and in which, at the moment the order was issued, bread, and every article of food, was cheaper than in England.\* We need not say, that in such a situation it would have required a great many years to have reduced France to reasonable terms of peace. A new operation in war to starve 30,000,000 of people, men, women and children!† France was in greater danger of famine in 1709

\* The order comprehended only corn, meal and flour, subject to a right of preemption. Rice was excluded.

† The French government viewed, with great indignation, this attempt of England to reduce them by famine. They thus speak of it in a decree on commerce and navigation. "France blockaded! Thus

than in 1793. But Great Britain did not then think it worth while to resort to the expedient of declaring provisions contraband. The English government, moreover, protested against this doctrine when Frederick IV., king of Denmark, undertook to put it in practice against Sweden.

The provisions shipped for France at the beginning of the revolution, were in the accustomed course of trade. The United States, even now an agricultural nation, were at that time more so in proportion to their wealth; the provision trade, in any shape, was of great moment; and, in the most favourable point of view, it was the exercise of uncommon power in a belligerent to disturb and control so important a branch of the commerce of a neutral. America, it is true, had no commercial treaty with Great Britain;—she had no treaty in which contrabands were enumerated, though in the treaties made with France, Holland, and Sweden, not an article had been added to the catalogue of contrabands, and in the convention with Prussia, military stores were not even forfeited.

Though exceedingly urged and solicited by the United States, Great Britain made no alteration in her maritime system. Indeed, we may truly say, that she manifested no

spoke of Rome, before their just destruction, those men of Punic faith, the ambitious and mercantile Carthaginians. France blockaded! Nay, if it were possible to reduce her to the confined limits of a single port, of a single garrisoned city, the French nation would then sally out of its limits by a bridge from Calais to Dover, and, landing with its liberty on the British territory, too long fertilized by our spoils, the heads of George and Pitt would fall at the feet of those Englishmen, who should feel themselves worthy of liberty, and the English island would raise at our side another republic, or become a desert. But in order to establish this bridge, let us construct a revolutionary communication with this modern Carthage, who, after having drained India, wishes, at her pleasure, to give constitutions to Europe. Let us decree a solemn act of navigation, and the mercantile island will be ruined. Let Carthage be destroyed! Thus did Cato conclude all his speeches in the Roman senate! Let England be ruined, annihilated. This shall be the concluding article of every revolutionary decree of the National Convention of France."

other friendly feeling than resulted from the barren act of exchanging a minister. This was done late in the negotiation; and it appeared, that the individual employed in the business, was merely to conduct a correspondence, that led to a vast deal of mutual reproach and recrimination between the two governments. From that year to the signing of the treaty, Great Britain issued various additional orders and instructions under the dates of Nov. 6, '93, Jan. 8, '94, Jan. 25, March 18 and August 18, '94.\* One of these instruc-

\* "1793, November 6th. The British commanders were directed to detain all neutral vessels laden with the produce of the French colonies, and all vessels carrying provisions or other supplies to said colonies."

"1794, Jan. 8th. The order issued on the 6th of November, 1793, was revoked, new regulations were adopted, pursuant to which, all vessels laden with merchandise of the French West India colonies, and going from the said colonies to any port in Europe, were brought in for adjudication. Vessels laden with merchandise, as aforesaid, were ordered to be brought in, to whatever port they might be bound; provided the merchandise was the property of any French subject. All vessels attempting to enter the blockaded ports of said colonies were seized, and all such as had on board naval and military stores, bound to their ports, were brought in for adjudication."

"1794, January 25th. The instructions issued on the 8th instant, were revoked. In future, all vessels, laden with the produce of any island or settlement belonging to France, Spain, or the United Provinces, and coming directly from any port thereof to any port in Europe, not being a port of Great Britain, nor a port of that country to which such ships, being neutral ships, belonged, were brought in for adjudication. All vessels, having on board the property of the subjects of the enemies' countries aforesaid, to whatever port they might be bound, were directed to be brought in as aforesaid. All vessels attempting to enter the blockaded ports aforesaid, and all such as had on board military or naval stores, were seized and brought in."

"1794, March 18th. The French West India islands were declared to be in a state of blockade."

"1794, August 18. The instructions dated 8th June, 1793, were revoked. Henceforth all ships laden with corn, flour or meal, destined for French ports, were brought in for adjudication, without any purchase of their cargoes being made on behalf of the British government."

This concludes the list of orders or instructions to the treaty of '94.

tions involved a principle in maritime law, extremely pernicious to neutral countries, owning a great tonnage,—a principle fatal to the carrying trade, and one that, since 1756, had not been revived to a great extent. In that year it was first generally established, and is now commonly known by the title of the rule of the war of '56. The rule forbids neutrals to carry on, in time of war, a trade, interdicted to them in time of peace. This definition comprehended the whole and the strict right claimed by the belligerent. Relaxations of it have at different periods taken place, particularly in the year preceding the treaty, signed by Mr. Jay. We have inserted those relaxations in a note, intending, hereafter, to enter at large into an examination of the rule itself.

The people of the United States were, at this period, uncommonly excited. A strong disposition, naturally awakened by the state of affairs in Europe, developed itself to form an alliance with France. Relieved from the pressure of their own domestic difficulties and embarrassments, and independence secured beyond the possibility of danger, all the passions of the people were left free to indulge in an exaggerated sympathy for the progress of the French revolution. Every circumstance, to excite the deepest concern of a whole nation, existed, with remarkable emphasis, in this case. The Americans regarded that event, not only with the eager feelings and profound interest of propagandists—of the authors of a new political faith, but with the sincere affection and intense anxiety of brethren, viewing, at a distance, the struggle and sufferings of a people, to whom they were themselves recently under great obligations, now contending in mortal combat for liberty and life. For more than twenty years, America had been in a state of extreme agitation; all the different passions, of which man is susceptible, had been brought into constant and intense action; at one time directed to the disasters and devastations of war, then absorbed by a contemplation of the poverty and miseries and real dangers of the country, finally at peace; and, at last, engaged in a discussion of the abstract provisions of a constitution, which

will be accompanied in history with the unrivalled praise of presenting the fullest development, yet known, of the virtues and faculties of man. Every motive to domestic excitement had ceased, and, before men had time to fall into the quiet, soothing habits of regular, uniform industry and occupation, the whole violence of all their passions was suddenly again roused and concentrated upon the French revolution.

The feeling of hostility towards England was extreme. Her commercial regulations exceedingly affected the trade of the country; and, while none of the old grievances were removed, complaints were made of the dangerous conduct of the Indians under English influence. On the other hand, the British government represented, in very strong terms, the indulgence shown to French privateers, in allowing them to be equipped, and of their actually capturing British vessels in the waters of the United States—of permission being granted to sell prizes in our ports—and of the difficulties, with which creditors, under the treaty, were assailed. But the conduct of the American government, at this period, is now justly matter of unqualified applause, both at home and abroad;—it has been mentioned by foreign statesmen with signal commendation;—it preserved the honour of the country; manifested the entire independence and impartiality of the administration; and, by maintaining a condition of neutrality, obtained that great and most lucrative commerce, which may justly be said to have laid the foundation of the uncommon wealth and prosperity, by which the United States are now distinguished.

In the spring of '93 France declared war against England and Holland. With all these powers the U. States had entered into amicable conventions, but the treaty of alliance, concluded with the former country in 1778, is of an unusual character. The first ten articles undoubtedly relate to the actual war between America and England, or such other war

\* We particularly refer to a speech made by Mr. Canning in the House of Commons.



between France and England, as should grow out of the "alliance." The *eleventh* article is a mutual guaranty of possessions and sovereignty "from the present time and forever."\* And the *twelfth* is a further confirmation of the construction of the eleventh. Some remarks on this subject will be found under the head of France, title "Convention of 1800."—A part of the Cabinet considered the article as applying, altogether, to a defensive war. But separate from the great difficulty of defining that description of hostilities, there appears to be no provision in the article itself, to warrant the interpretation. It is a simple guaranty, in brief, plain language, of the "present possessions or such as should be acquired by the peace." The article does not guaranty possessions that shall be made by conquests in future wars. But whatever may be the legitimate construction of this celebrated treaty of alliance, we have only in this place to remark, that the government regarded it, as involving an obligation on their part impossible to fulfil.

Soon after the state of war in Europe was known, the President issued a proclamation,† enjoining a strict neutrality on all the citizens, and declaring that the government would not protect from confiscation such articles as were deemed contraband by the "*modern usage of nations*." The government, however, determined to receive a minister from the French republic, though the treaty of amity made with Louis XVI. led to embarrassments on this subject, as well as the existence of a regency consisting of certain members of the late royal family of France. But it may well be a question, how far it is incumbent upon nations to adhere to compacts entered into with a government that has been dispossessed. Though nations should only be discharged in the last extremity from the obligations of treaties, they are required by public law to recognise new governments, as soon as it is evident, they are able to maintain their own in-

\* See Treaty—second chapter.

† See title "Convention of 1800."

dependence, and system of internal or municipal law. This is done for the welfare and security of society.\*

\* We publish in this place the rules of neutrality, established by the government, and sent in instructions to its Custom House officers.

"1. The original arming and equipping of vessels in the ports of the United States by any of the belligerent parties for military service, offensive or defensive, is deemed unlawful.

"2. Equipments of merchant vessels by either of the belligerent parties in the ports of the United States, purely for the accommodation of them as such, is deemed lawful.

"3. Equipments in the ports of the United States of vessels of war, in the immediate service of the government of any of the belligerent parties, which, if done to other vessels, would be of a doubtful nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize of the subjects, people, or property of France coming with their prizes into the ports of the United States, pursuant to the 17th article of our treaty of amity and commerce with France.

"4. Equipments in the ports of the United States, by any of the parties at war with France, of vessels fitted for merchandise and war, whether with or without commission, which are doubtful in their nature, as being applicable either to commerce or war, are deemed lawful; except those which shall have made prize, &c.

"5. Equipments of any vessels of France, in the ports of the United States, which are doubtful in their nature as being applicable to commerce or war, are deemed lawful.

"6. Equipments of every kind in the ports of the United States of privateers of the powers at war with France, are deemed unlawful.

"7. Equipments of vessels in the ports of the United States, which are of a nature solely adapted to war, are deemed unlawful; except those stranded or wrecked, as mentioned in the 18th article of our treaty with France, the 16th of our treaty with the United Netherlands, the 9th of our treaty with Prussia; and except those mentioned in the 19th article of our treaty with France, the 17th of our treaty with the United Netherlands, the 18th of our treaty with Prussia.

"8. Vessels of either of the parties not armed, or armed previous to their coming into the ports of the United States, which shall not have infringed any of the foregoing rules, may lawfully engage or enlist therein their own subjects or citizens, not being inhabitants of the United States; except privateers of the powers at war with France, and except those vessels which shall have made prize, &c."

The Executive was resolved, not only to maintain its neutral position, but the hope of concluding a commercial arrangement with one of the great belligerents was not entirely abandoned. The despatches and advices, received from England, indicated a wish, on the part of that government, not to drive this country into a war; at any rate, it was desirable to ascertain, beyond a doubt, the dispositions of the British ministry,—and either to remove the causes of the quarrel then existing, or to obtain satisfactory evidence that Great Britain was indifferent to their existence. The President, accordingly, on the 16th of April 1794, sent the following message to the Senate :

“The communications, which I have made to you during your present session, from the despatches of our minister in London, contain a serious aspect of our affairs with Great Britain. But, as peace ought to be pursued with unremitted zeal, before the last resource, which has so often been the scourge of nations, and cannot fail to check the advanced prosperity of the United States, I have thought proper to nominate, and do hereby nominate, John Jay, as envoy extraordinary of the United States, to his Britannic Majesty.

“My confidence in our minister plenipotentiary in London continues undiminished. But a mission like this, while it corresponds with the solemnity of the occasion, will announce to the world a solicitude for the friendly adjustment of our complaints, and a reluctance to hostility. Going immediately from the United States, such an envoy will carry with him a full knowledge of the existing temper and sensibility of our country; and will thus be taught to vindicate our rights with firmness, and to cultivate peace with sincerity.”

This has been considered one of the boldest and most decided resolutions, adopted by General Washington during his administration. It is one that at the moment, awakened most reproach and censure; but we doubt exceedingly, whether any one measure, proposed by that illustrious individual, has been, in the end, accompanied with more good consequences to the nation. It confirmed at the time, the neutrality of the country; and, consequently, extended to trade and commerce all the confidence and security the cer-

tainty of that fact could bestow. No one feared that the United States would take part with England. This was impossible. Her neutrality could not be disturbed in that direction. And, when an envoy extraordinary was nominated to his Britannic Majesty, the nation became satisfied, that the executive, at least, was determined not to take part with France. This nomination settled the question of neutrality for many years. The oppressive acts of the belligerents were then in their infancy; America had, comparatively, suffered little; and though not a stipulation, in favour of neutral rights, was made in the treaty of 1794, Great Britain appeared to rest, for a moment, from the unjust exercise of her vast power on the ocean. The U. States escaped a war at this time, an evil infinite in its consequences. The wasting, bloody conflicts of the French Revolution were just then beginning; and if this country had, at that early period, with all the heat and excitement of the moment upon her, rushed into the fray, no one could have meted out the degree of honour or dishonour that would have attended her course, or have foretold the disasters, that would have overtaken her own matchless institutions. The progress of events, at last, drove her into a war with one of the great belligerents; but this was toward the close of a scene, of which she had been for twenty years a spectator. The distance of America from Europe, the youth and peculiarity of her government, at that time little understood, and certainly far from being confirmed, the narrowness of her resources, the entire absence of every species of military armament, powerfully combined to point out the course she should adopt. In ordinary times, it would have required neither uncommon firmness nor dexterity to have conducted the affairs of the nation. But this was an extraordinary period—extraordinary, not only from the remarkable circumstance, that France had now become professedly herself a republic, and was threatened with annihilation by a European coalition, at the head of which was England,—but more extraordinary still, from the moral phenomenon, that the minds of men, in all civilized countries of the world, were infinitely

excited by an universal and overwhelming political infatuation. The government of the United States, depending solely on opinion, had to contend with this spirit. And that opinion, to which it looked for support and defence, was, itself, exceedingly infected and bewildered.

Mr. Jay arrived in London in June; he was deputed for an extraordinary purpose; and there can be no question, but a war would have taken place, if he had not succeeded in making a treaty. We shall extract a part of his instructions, not so much on account of any importance that belongs to them, as from the circumstance, that this was undoubtedly the most important embassy that has been undertaken since the organization of the Federal government. The treaty, too, negotiated on this occasion, though, perhaps, justified by the alarming and perplexed state of public affairs at that period, can with difficulty be reconciled to the instructions, prepared by the Secretary of State.

"The mission upon which you are about to enter, as Envoy Extraordinary to the Court of London, has been dictated by considerations of an interesting and pressing nature.

"You will doubtless avail yourself of these to convince Mr. Pinckney, our Minister in ordinary there, of the necessity of this measure, and will thus prevent any wound to his sensibility. He may be assured that it is the impression which will naturally accompany this demonstration of the public sentiment, and not the smallest abatement of confidence in him, which has recommended a special appointment. Nor will any of his usual functions be suspended, except so far as they may be embraced in the present commission. It would be unnecessary to add, but for the sake of manifesting this fact, and removing difficulties which may arise in your own breast, that you will communicate with him without reserve.

"A full persuasion is entertained that throughout the whole negotiation you will make the following its general objects: to keep alive in the mind of the British Minister that opinion, which the solemnity of a special mission must naturally inspire, of the strong agitations excited in the people of the United States by the disturbed condition of things between them and Great Britain; to repel war, for which we are not disposed, and into which the neces-

city of vindicating our honour and our property may, but can alone drive us; to prevent the British ministry, should they be resolved on war, from carrying with them the British nation; and, at the same time, to assert, with dignity and firmness, our rights, and our title to reparation for past injuries.

"You will mention, with due stress, the general irritation of the United States at the vexations, spoliations, captures, &c. and, being on the field of negotiation, you will be more able to judge than can be prescribed now, how far you may state the difficulty, which may occur in restraining the violence of some of our exasperated citizens.

"If the British ministry should hint at any supposed predilection in the United States for the French nation, as warranting the whole or any part of these instructions, you will stop the progress of this subject as being irrelative to the question in hand. It is a circumstance which the British nation have no right to object to us; because we are free in our affections, and independent in our government. But it may be safely answered, upon the authority of the correspondence between the Secretary of State and Mr. Hammond, that our neutrality has been scrupulously observed.

"In this negotiation as to the treaty of peace, we have been amused by transferring the discussions concerning its inexecution and infractions from one side of the Atlantic to the other. In the meantime, one of the consequences of holding the posts has been much bloodshed on our frontiers by the Indians, and much expense. The British Government having denied their abetting of the Indians, we must of course acquit them. But we have satisfactory proofs (some of which, however, cannot, as you will discover, be well used in public,) that British agents are guilty of stirring up, and assisting with arms, ammunition, and warlike implements, the different tribes of Indians against us. It is incumbent upon that Government to restrain those agents; or the forbearance to restrain them cannot be interpreted otherwise than as a determination to countenance them. It is a principle from which the United States will not easily depart, either in their conduct towards other nations, or what they expect from them, that the Indians dwelling within the territories of one, shall not be interfered with by the other.

"It may be observed here, as comprehending both of the foregoing points, that the United States testify their sincere love of peace by being nearly in a state of war, and yet anxious to obviate absolute war by friendly advances; and if the desire of Great Britain to be in harmony with the United States be equally sincere, she will readily discover what kind of sensations will at length arise, when their trade is plundered; their resources wasted in an Indian war; many of their citizens exposed to the cruelties of the savages; their rights by treaty denied; and those of Great Britain enforced in our Courts. But you will consider the inexecution and infraction of the treaty as standing on distinct grounds from the vexations and spoliations; so that no adjustment of the former is to be influenced by the latter.

"3. It is referred to your discretion whether, in case the two preceding points should be so accommodated as to promise the continuance of tranquillity between the United States and Great Britain, the subject of a commercial treaty may not be listened to by you, or even broken by the British ministry. If it should, let these be the general objects:

"1. Reciprocity in navigation, particularly to the West Indies, and even to the East Indies.

"2. The admission of wheat, fish, salt meat, and other great staples, upon the same footing with the admission of the great British staples in our ports.

"3. Free ships to make free goods.

"4. Proper security for the safety of neutral commerce in other respects; and particularly

"By declaring provisions never to be contraband, except in the strongest possible case, as the blockade of a port, or, if attainable, by abolishing contraband altogether.

"By defining a blockade, if contraband must continue in some degree, as it is defined in the armed neutrality.

"By restricting the opportunities of vexation in visiting vessels: and

"By bringing under stricter management privateers; and expediting recoveries against them for misconduct.

"5. Exemption of emigrants, and particularly manufacturers, from restraint.

"6. Free exports of arms and military stores.



"7. The exclusion of the terms 'the most favoured nation,' as being productive of embarrassment.

"8. The convoy of merchant ships by the public ships of war, where it shall be necessary, and they be holding the same course.

"9. It is anxiously to be desired, that the fishing grounds now engrossed by the British should be opened to the citizens of the United States.

"10. The intercourse with England makes it necessary that the disabilities, arising from alienage in cases of inheritance, should be put upon a liberal footing, or rather abolished.

"11. You may discuss the sale of prizes in our ports while we are neutral; and this, perhaps, may be added to the considerations which we have to give, besides those of reciprocity.

"12. Proper shelter, defence and succour against pirates, shipwreck, &c.

"13. Full security for the retiring of the citizens of the United States from the British dominions, in case a war should break out.

"14. No privateering commissions to be taken out by the subjects of the one, or citizens of the other party, against each other.

"15. Consuls, &c. to be admitted in Europe, the West and East Indies.

"16. In case of an Indian war, none but the usual supplies in peace shall be furnished.

"17. In peace, no troops to be kept within a limited distance from the lakes.

"18. No stipulation whatever is to interfere with our obligations to France.

"19. A treaty is not to continue beyond fifteen years.

"5. You will have no difficulty in gaining access to the ministers of Russia, Denmark and Sweden, at the Court of London. The principles of the armed neutrality would abundantly cover our neutral rights. If, therefore, the situation of things with respect to Great Britain, should dictate the necessity of taking the precaution of foreign cooperation upon this head; if no prospect of accommodation should be thwarted by the danger of such a measure being known to the British Court; and if an entire view of all our political relations shall, in our judgment, permit the step; you will sound those ministers upon the probability of an alliance with their nations to support those principles."

The discussions attending this treaty were principally verbal ;—the detail of the argument would amount to little else than a repetition of the course of reasoning or remarks, that have already been introduced, relative to the transactions with England. The negotiation was once broken off, and Mr. Jay wrote a private letter to the President, signifying to him, that he had abandoned all hopes of an arrangement. He, also, began the composition of a long memorial on the whole subject, which it was his intention to have transmitted to the British minister ; but a favourable turn taking place in affairs, a treaty of amity, commerce and navigation, was finally signed on the 19 of November 1794 at London, with William Wyndham Baron Grenville.\*

\* This is one of the longest treaties in the collection.

"ART. 2. His majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety-six, and all the proper measures shall in the interval be taken by concert between the government of the United States, and his majesty's governor general in America, for settling the previous arrangements which may be necessary respecting the delivery of the said posts : the United States in the mean time, at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders, within the precincts or jurisdiction of the said posts, shall continue to enjoy, unmolested, all their property, of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their effects ; and it shall also be free to them to sell their lands, houses, or effects, or to retain the property thereof, at their discretion ; such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the government thereof ; but they shall be at full liberty so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of his Britannic majesty, shall be considered as having elected to become citizens of the United States.

"ART. 3. It is agreed that it shall at all times be free to his majesty's

It is well known that this treaty was extremely unpopular.

subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass, by land, or inland navigation, into the respective territories and countries of the two parties, on the continent of America, (the country within the limits of the Hudson's bay company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood, that this article does not extend to the admission of vessels of the United States into the seaports, harbours, bays, or creeks of his majesty's said territories; nor into such parts of the rivers in his majesty's said territories as are between the mouth thereof and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and places on its eastern side, to whichsoever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of his majesty in Great Britain.

"All goods and merchandise whose importation into his majesty's said territories in America, shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandise shall be subject to no higher or other duties than would be payable by his majesty's subjects on the importation of the same from Europe into the said territories. And in like manner, all goods and merchandise whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by his majesty's subjects, and such goods and merchandise shall be subject to no higher or other duties, than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said states. And all goods not prohibited to be exported from the said territories respectively, may, in like manner, be carried out of the same by the two parties respectively, paying duty as aforesaid.

"No duty of entry shall ever be levied by either party on peltries

*Indian*

"The newspapers," writes the Secretary of State, Mr. Randolph, July 21, 1795, "that have been forwarded you, will show the unpopularity of the treaty at Boston. The day before yesterday New-

brought by land, or inland navigation, into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

"No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying places on either side, for the purpose of being immediately reimparked and carried to some other place or places. But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides, it is agreed, that this exemption from duty shall extend only to such goods as are carried in the usual and direct road across the portage, and are not attempted to be in any manner sold or exchanged during their passage across the same, and proper regulations may be established to prevent the possibility of any frauds in this respect.

"As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favourable to friendship and good neighbourhood, it is agreed, that the respective governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

"ART. 4. A joint survey of the Mississippi to be made, from one degree below the falls of St. Anthony to the principal sources of that river, to ascertain whether a line, drawn due west from the lake of the woods, will intersect the Mississippi.

"ART. 5. Commissioners to be appointed to identify the river St. Croix, designated in the definitive treaty of peace.

"ART. 6. Whereas it is alleged by divers British merchants and others his Majesty's subjects, that debts, to a considerable amount, which were bona fide contracted before the peace, still remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments since the peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that by the ordinary course of judicial proceedings, the Bri-

York exhibited a similar scene. It will, probably, be reacted in Philadelphia to-morrow, and will perhaps travel further. When I inform you that the President has not yet ratified the treaty, his

tish creditors cannot now obtain, and actually have and receive full and adequate compensation for the losses and damages which they have thereby sustained, it is agreed, that in all such cases, where full compensation for such losses and damages cannot, for whatever reason, be actually obtained, had, and received by the said creditors in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors: but it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors, or other causes as would equally have operated to produce such loss, if the said impediments had not existed; nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant. Five commissioners to be appointed to ascertain the amount of losses which the United States consent to make good to British creditors.

"ART. 7. Whereas complaints have been made by divers merchants, and other citizens of the United States, that during the course of the war in which his majesty is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property, under colour of authority or commissions from his majesty; and that, from various circumstances belonging to the said cases, adequate compensation for the losses and damages so sustained, cannot now be actually obtained, had, and received, by the ordinary course of judicial proceedings; it is agreed, that in all such cases, where adequate compensation cannot, for whatever reason, be now actually obtained, had, and received by the said merchants and others, in the ordinary course of justice, full and complete compensation for the same will be made by the British government to the said complainants. But it is distinctly understood, that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant. Five commissioners to be appointed with the same powers, (*mutatis mutandis*) as those appointed in virtue of the 6th article of this treaty.

"ART. 9. American citizens and British subjects holding lands in the territory of either party, to exercise the rights appertaining thereto, as if they were natives.

character will convince you, that nothing will deter him from doing what he thinks right, and that the final question lies open from causes, unconnected with any considerations, but the interest and

"ART. 10. No debts, or moneys, vested in funds, to be confiscated in the event of war.

"ART. 12. His majesty consents that it shall and may be lawful, during the time hereinafter limited, for the citizens of the United States to carry to any of his majesty's islands and ports in the West Indies from the United States, in their own vessels, not being above the burden of seventy tons, any goods or merchandises, being of the growth, manufacture, or produce of the said states, which it is or may be lawful to carry to the said islands or ports, from the said states, in British vessels; and that the said American vessels shall be subject there to no other or higher tonnage duties or charges, than shall be payable by British vessels in the ports of the United States; and that the cargoes of the said American vessels shall be subject there to no other or higher duties or charges, than shall be payable on the like articles if imported there from the said states in British vessels.

"And his majesty also consents, that it shall be lawful for the said American citizens to purchase, load, and carry away in their said vessels to the United States from the said islands and ports, all such articles, being of the growth, manufacture, or produce of the said islands, as may now by law be carried from thence to the said states in British vessels, and subject only to the same duties and charges on exportation, to which British vessels and their cargoes are or shall be subject in similar circumstances.

"Provided always, that the said American vessels do carry and land their cargoes in the United States only, it being expressly agreed and declared, that during the continuance of this article, the United States will prohibit and restrain the carrying any molasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his majesty's islands, or from the United States to any part of the world, except the United States, reasonable sea stores excepted. Provided also, that it shall and may be lawful, during the same period, for British vessels to import from the said islands, into the United States, and to export from the United States, to the said islands, all articles whatever, being of the growth, produce, or manufacture of the said islands, or of the United States respectively, which now may, by the laws of the said states, be so imported and exported. And that the cargoes of the said British vessels shall be subject to no other or higher duties, or charges, than shall be payable on the same articles if so imported or exported in American vessels.



duties of the United States. He is at present in Virginia, and will, doubtless, very soon take his conclusive step. If I were permitted to conjecture what that would be, I should suspect that at any rate

"It is agreed that this article and every matter and thing therein contained, shall continue to be in force during the continuance of the war in which his majesty is now engaged; and also for two years from and after the day of the signature of the preliminary or other articles of peace, by which the same may be terminated.

"And it is further agreed, that at the expiration of the said term, the two contracting parties will endeavour further to regulate their commerce in this respect, according to the situation in which his majesty may then find himself with respect to the West Indies, and with a view to such arrangements as may best conduce to the mutual advantage and extension of commerce. And the said parties will then also renew their discussions, and endeavour to agree, whether in any and what cases neutral vessels shall protect enemy's property; and in what cases provisions and other articles, not generally contraband, may become such. But in the mean time, their conduct towards each other in these respects, shall be regulated by the articles hereinafter inserted on those subjects.

"ART. 13. His majesty consents that the vessels belonging to the citizens of the United States of America shall be admitted and hospitably received in all the seaports and harbours of the British territories in the East Indies. And that the citizens of the said United States may freely carry on a trade between the said territories and the said United States, in all articles of which the importation or exportation respectively, to or from the said territories, shall not be entirely prohibited. Provided only, that it shall not be lawful for them in any time of war between the British government and any other power or state whatever, to export from the said territories, without the special permission of the British government there, any military stores, or naval stores, or rice. The citizens of the United States shall pay for their vessels when admitted into the said ports, no other or higher tonnage duty than shall be payable on British vessels when admitted into the ports of the United States. And they shall pay no other or higher duties or charges, on the importation or exportation of the cargoes of the said vessels, than shall be payable on the same articles when imported or exported in British vessels. But it is expressly agreed, that the vessels of the United States shall not carry any of the articles exported by them from the said British territories, to any port or place, except to some port or place in America, where the same shall be unladen, and such regulations shall be adopted by both par-



he would not sign it, till it should return from England with the addition of the suspending article, and probably not even then, if the late British order, for the capture of provisions going to France, should have been issued, as we suppose.

ties, as shall, from time to time, be found necessary to enforce the due and faithful observance of this stipulation. It is also understood that the permission granted by this article, is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories; but vessels going with their original cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the coasting trade. Neither is this article to be construed to allow the citizens of the said states to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British government established there; and if any transgression should be attempted against the regulations of the British government in this respect, the observance of the same shall and may be enforced against the citizens of America in the same manner as against British subjects or others transgressing the same rule. And the citizens of the United States, whenever they arrive in any port or harbour in the said territories, or if they should be permitted in manner aforesaid, to go to any other place therein, shall always be subject to the laws, government and jurisdiction of what nature established in such harbour, port, or place, according as the same may be. The citizens of the United States may also touch for refreshment at the island of St. Helena, but subject in all respects to such regulations as the British government may from time to time establish there.

"ART. 14. There shall be between all the dominions of his majesty in Europe and the territories of the United States, a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries respectively, shall have liberty freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places and rivers, within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time. Also to hire and possess houses and warehouses for the purposes of their commerce, and generally, the merchants and traders on each side, shall enjoy the most complete protection and security for their commerce; but subject always, as to what respects this article, to the laws and statutes of the two countries respectively.

"ART. 15. It is agreed that no other or higher duties shall be paid by the ships or merchandise of the one party, in the ports of the other,

"The present may well be considered as a crisis, from the supposition of a rejection or a ratification. In the former case, the result with Great Britain is not so easily foreseen. In the latter,

than such as are paid by the like vessels or merchandise of all other nations. Nor shall any other or higher duty be imposed in one country on the importation of any articles, the growth, produce, or manufacture of the other, than are or shall be payable on the importation of the like articles, being of the growth, produce, or manufacture of any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles, to or from the territories of the two parties respectively, which shall not equally extend to all other nations.

"But the British government reserves to itself the right of imposing on American vessels entering into the British ports in Europe, a tonnage duty equal to that which shall be payable by British vessels in the ports of America: and also such duty as may be adequate to counter-vail the difference of duty now payable on the importation of European and Asiatic goods, when imported into the United States in British or in American vessels.

"The two parties agree to treat for the more exact equalization of the duties on the respective navigation of their subjects and people, in such manner as may be most beneficial to the two countries. The arrangements for this purpose shall be made at the same time, with those mentioned at the conclusion of the twelfth article of this treaty, and are to be considered as a part thereof. In the interval, it is agreed that the United States will not impose any new or additional tonnage duties on British vessels, nor increase the now subsisting difference between the duties payable on the importation of any articles in British or in American vessels.

"ART. 17. Vessels captured on suspicion of having contraband, or *enemy's property*, to be sent into the nearest port; the contraband, &c. to be taken out, and the vessel and remainder of the cargo to be allowed to proceed.

"ART. 18. Vessels of either party, not to be detained, on attempting to enter a blockaded place, unless previously warned off.

"ART. 21. A third (enemy) power, not allowed to enlist citizens or subjects of either party. Persons taken offending against the provisions of this article may be treated as pirates.

"ART. 24. It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other prince or state in enmity with either nation, to

the result in our own country is involved with many delicate and hazardous topics. It is my consolation, however, that he who guides the helm, will, by his wisdom and fortitude, steer us into safe port."

arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that prince or state from whom they obtained their commissions.

"ART. 25. It shall be lawful for the ships of war and privateers belonging to the said parties respectively, to carry whithersoever they please, the ships and goods taken from their enemies, without being obliged to pay any fee to the officers of the admiralty, or to any judges whatever; nor shall the said prizes when they arrive at, and enter the ports of the said parties, be detained or seized, neither shall the searchers or other officers of those places visit such prizes, (except for the purpose of preventing the carrying of any part of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation, or commerce,) nor shall such officers take cognizance of the validity of such prizes; but they shall be at liberty to hoist sail and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said ships of war or privateers shall be obliged to show.— No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties; but if forced by stress of weather, or the dangers of the sea, to enter therein, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other sovereigns or states. But the two parties agree, that while they continue in amity, neither of them will in future make any treaty that shall be inconsistent with this or the preceding article.

"Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other, to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories, by ships of war, or others having commission from any prince, republic, or state whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated, shall use his utmost endeavours to obtain from the offending party, full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

The President had early determined to ratify the treaty; and, after a long and careful examination, it was finally ratified by the Senate, a precise constitutional number voting for it. A reservation was, however, made, in relation to the *twelfth* article. That article regulated the trade between

"ART. 26. In case of a rupture, the merchants and others of the two nations, during good behaviour, allowed to continue their trade.

"ART. 27. It is further agreed, that his majesty and the United States, on mutual requisitions, by them respectively, or by their respective ministers, or officers, authorized to make the same, will deliver up to justice, all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other: provided, that this shall only be done on such evidence of criminality, as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive.

"ART. 28. It is agreed, that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the *twelfth*, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged, but subject to this condition, that whereas the said *twelfth* article will expire by the limitation therein contained, at the end of two years from the signing of the preliminary or other articles of peace, which shall terminate the present war in which his majesty is engaged, it is agreed, that proper measures shall, by concert, be taken, for bringing the subject of that article into amicable treaty and discussion, so early before the expiration of the said term, as that new arrangements on that head may, by that time, be perfected, and ready to take place. But if it should unfortunately happen, that his majesty and the United States should not be able to agree on such new arrangements, in that case, all the articles of this treaty, except the first ten, shall then cease and expire together."

In 1796, an explanatory article, respecting the third article, (concerning the Indians) was agreed on; and in '98, another article, relating to the source of the St. Croix, was made—the first in Philadelphia, between Mr. Pickering, the Secretary of State, and Mr. Bond, the English Consul General,—and the other at London, between the American Minister, Mr. King, and Lord Grenville.

the United States and the West Indies. The Senate agreed to the ratification, on condition an article was added, suspending the operation of the 12th. This presented a new and great difficulty. The Senate advised to the ratification of an article that had not been laid before them; and the President was called upon, under that advice, to ratify a treaty, into which the article, that was made the condition of the ratification, had not been introduced. But in the mean time, the English revived their provision order. This circumstance led to considerable delay, on the part of the American government. However, in the month of August, the President, being satisfied that the proceedings of the Senate fell clearly within the meaning of the constitution,\* resolved to ratify the treaty, and to accompany that act by a strong memorial, directed against the provision order; a step attended with happy consequences;—the order being revoked, and the treaty at last ratified in the usual form, the 28th of October 1795, together with an additional article, suspending the operation of the *twelfth*. This act was performed by Mr. J. Q. Adams, Minister Resident at the Hague, despatched for that purpose to London, Mr. Pinckney being then at Madrid.†

The objection of the Senate to a part of the *twelfth* article was perfectly just. It allowed a direct trade between the United States and the British colonies in the West Indies, in vessels not exceeding *seventy* tons in burthen, but the United States were under an obligation to *restrain* their vessels from carrying certain articles, the produce of those islands, to any other place than the United States. One of these articles was cotton. It is now generally known, that the American minister, who negotiated the treaty, was not aware that cotton was already introduced into the United States, and had become an article of export;—a fact of which he could well be ignorant, for we find it stated in the debates of Congress, that a member from South Carolina ob-

\* Art. 2. sec. 2. par. 2.

† The appropriations for this treaty were passed by a vote in the House of 51 to 48;—a small majority.

served, in the House of Representatives in 1789, that the people of the southern states intended to cultivate cotton, and "if good seed could be procured, he believed they might succeed." When the treaty was made, the amount of the export could not be ascertained; for, till 1802, no discrimination was made between cotton wool of domestic and of foreign growth. The twelfth article, would, therefore, have certainly stopped the export of that commodity, which amounted, at the time this article would have expired by its own limitation, to about 45,000,000 lbs. annually. It is also quite clear, that this article would have broken up the greater part of the American carrying trade. During the continuance of it, the Americans were forbid from *carrying "any molasses, sugar, coffee, cocoa, or cotton, in American vessels, either from his Majesty's islands, or from the United States, to any part of the world, except the United States."* This provision would have, in effect, deprived America of a great part of the benefits she derived from a state of neutrality, during the wars in Europe. Access to the West India islands, under the protection of treaty, was abandoned by cancelling this article; though the arrangement, as to the burthen of the vessel, may be considered a judicious one. Small vessels, with high waists, both on account of the outward cargo and the climate of the islands (not being compelled to remain long to dispose of their stock, by which the crew are saved from great exposure) are probably the best for this navigation. A merchant *said*, that with the 70 ton vessels, allowed in the treaty, he would have brought every hogshead of sugar from the West India islands. As respected that trade, it was the best article in the treaty and, thus far, the only formal arrangement we have succeeded in making. On another occasion, an intercourse was permitted, by the French government, with their islands, in vessels not exceeding sixty tons in burthen. The treaty restored the posts on the western frontier to the Americans, without an indemnity for their long detention, or for the slaves carried off by Sir Guy Carleton. The English had held these posts *twelve* years, in violation of the treaty.

The provision can only be considered as an acknowledgment, on the part of the Americans, of having violated the same treaty, to the extent declared by the English,—and it was an absolute surrender of the property removed in '88 from New-York.

Ship timber, tar, hemp, sails and copper were declared contraband, though free in all other treaties made by the United States. The laws of nations do not specifically enumerate them as subject to confiscation. Provisions also, were declared contraband, according to modern usages;\* obviously, an arbitrary distinction, and in most respects unmeaning,—because the question, in the correspondence between the two governments, had turned upon the point, whether public law rendered them contraband or not. Referring the principle to this standard was, in other words, acknowledging the pretensions of England, for wherever she had the power to enforce her orders, she had made provisions subject to the usual penalties of war. There was, also, an express declaration, that the flag did not cover the merchandise. This is the only treaty, signed by America, in which this acknowledgment can be found. We have never been able to obtain from England a denial of this right of the belligerent, but silence wears a different aspect from a direct confirmation of the legality of the practice. The American government had, however, before acknowledged this principle, in its official correspondence. We refer to a passage in Mr. Jefferson's letter of July '93.† The

\* The article, however, entitled them to the right of preemption; though this provision does not, in reality, alter the *principle* of the stipulation.

† "Les marchandises neutres chargées par l'ennemi sont libres mais le pavillon neutre ne neutralize pas la marchandise ennemie." (Schoell, vol. iv. p. 15.) This is the leading doctrine in the oldest work extant on maritime law. It was received at a time when it was easy to ascertain the ownership of goods or cargo—when the owner embarked with and accompanied his goods to a market. The application is more difficult in modern days. Business is now done by commission, and the transfers of trade are constant, and exceedingly



treaty did not define the right of search or blockade, but acknowledged both in general terms.

These were the points that related to the laws of nations; they certainly could not be considered as favourable to the United States; but these were doctrines England would not relinquish, as this government has had abundant experience. She would not yield them to the armed neutrality of '80, nor has any one state, or coalition of states, yet succeeded in compelling her to abate a tittle from a rigorous enforcement of them. Mr. Jay's treaty has been called an instrument that settled nothing. There is some ground for the description. The position and boundaries of the Mississippi and the St. Croix, the debts, and the spoliations, were referred to commissioners; the West India trade, reciprocal duties, contrabands, the neutral flag, and provisions, to future negotiations. These were really the principal provisions of the treaty, and it is worth while to trace, for a moment, their history. The north-western and north-eastern boundaries, though in progress, have not been settled to this day; the *commission* on the debts was suspended,—and the American government agreed to pay, under the convention with Mr. King, in 1802, a sum of £ 600,000, as a release from the obligations of the sixth article of Mr. Jay's treaty; the West India trade has not yet been secured; and the great questions of neutral flag, contrabands, and provisions, rest in the same profound uncertainty that they did in 1794. But the treaty was not without some advantages to the United States, though its principal advantage consisted in its having decided the question of neutrality;—if it settled none of the leading questions of neutral rights, it at least prevented a war, at a moment when the government and nation were in every respect unprepared,—in itself an infinite benefit. It opened all the ports of Great Britain in Europe, on equal terms; all her ports in the East Indies,—but it

involved. England, at the peace of Utrecht, acknowledged that the flag covered the merchandise. The basis of the armed neutrality of 1780 and 1800, was this principle,—but they effected nothing for neutral commerce.

made the trade round the Cape of Good Hope direct, and forbid the coasting trade. Before the treaty, the Americans had both an indirect and a coastwise trade in India. They carried cottons, for example, from the British settlements in the East Indies, to Canton. But the trade to India and Europe depended, before 1794, on the pleasure of the British government ; it was now secured by treaty.

The ratification of this instrument may be considered the proper solid foundation of the commercial prosperity of the United States. The first act of the government that proved the stability of the federal constitution ; it was a severe trial ; and the steadiness, with which the shock was borne, may be attributed, in some degree, to the personal character of the President.\*

\* In 1791, the lords of the committee of Privy Council made a minute report on the trade of England with America. This report was intended to show on what terms it would be favourable for Great Britain to conclude a treaty with the United States. The West India planters were desirous of having an intercourse opened with America, immediately after the peace of '83.—(Collection, &c. of reports on trade and navigation, &c. London, 1807, published by order of the society of ship owners, &c.)

## CHAPTER VII.

## TREATY OF 1793 WITH SPAIN.

*Spain powerful at time of Revolution—Family Compact—Great American possessions—Franklin appointed minister in '77 to Madrid—Important letter—A. Lee goes to Bilboa—Letter of Grimaldi—Europe secretly hostile to England—Spain avoids the coalition—Strives to reconcile France and England—Fails—Declares war against England in '79—Jay sent to Spain—Received—Details of his proceedings—Makes no treaty—English government sent Cumberland to Madrid—Fails—Important instructions—De Florida Blanca's mistake respecting invitation to Jay—Carmichael, Chargé—Presented at Court—Letter concerning la Fayette—Gardoqui, Spanish Chargé—Treats respecting boundaries—Nothing done—South and North divide on the navigation of the Mississippi—South in minority—Short and Carmichael, commissioners to Spain—Remarks on Mississippi—Important instructions—Spain, having entered the coalition of '93, unwilling to treat—Indians—Acts of hostility in Kentucky—Short—Viar—Jaudenes—Peace of Basle—Godoy—Pinckney sent to Madrid—Treaty of San Lorenzo el Real with Prince of Peace—Right of deposit at New Orleans suspended—Eastern and Western boundaries of Louisiana—France opposes claims of United States—Government take possession of W. Florida—Folch—Kemper—Spoliations—Settled by transfer of E. Florida—Humphreys—Yrujo—Bowdoin—Intercourse renewed in 1814—Erving.*

At the time of the declaration of independence, Spain was mistress of half the continent of South America. She was one of the most powerful nations of Europe, not only from her own wealth, valuable colonies, and numerous and well appointed army and navy, but in consequence of an intimate connexion with France. The "family compact," adopted by the treaty of Paris of 1761, an alliance between

all the princes of the house of Bourbon, more especially the crowns of France and Spain, still existed. By that instrument, those two powers mutually guaranteed their states and possessions, and assumed, as the basis of their alliance, the diplomatic maxim, "*Qui attaque une couronne, attaque l'autre.*" All the American possessions of Spain were then entire; she enjoyed an active, extensive and lucrative commerce; and was as determined an enemy of England as France herself.

After arrangements had been made by the Congress of the confederation to obtain the assistance of France, one of the next subjects of attention was Spain. As early as December 1776, it was resolved to send commissioners to that country, and, in the beginning of the next year, Dr. Franklin was appointed the first envoy to Madrid, though he never went to that court;\* but while in France, he addressed a letter to the Count d'Aranda, at that time the Spanish minister at Versailles. This letter will be found in the memoirs of Dr. Franklin, and as it explains in a few words the situation of the two countries, we shall extract a portion of it:

"Passy, April 7, 1777. Sir,—I left in your excellency's hands to be communicated, if you please, to your court, a duplicate of the commission from the Congress, appointing me to go to Spain as their minister plenipotentiary. But I understand the receiving such a minister is not at present thought convenient, and I am sure, the Congress would have done nothing that might incommode, in the least, a court they so much respect. I shall, therefore, postpone that journey till circumstances may make it more suitable. In the mean time, I beg leave to lay before his catholic majesty, through the hands of your excellency, the propositions contained in a resolution of Congress dated December 30, 1776, viz., "That if his catholic majesty will join with the United States in a war against Great Britain, they will assist in reducing to the possession of Spain the town and harbour of Pensacola, provided the inhabitants of the United States shall have the free navigation of the Mississippi, and the use of the harbour of Pensacola, and will (pro-

\* For commission, see Secret Journals, vol. ii. Jan. 1, '77.

vided it shall be true that his Portuguese majesty\* has insultingly expelled the vessels of these States from his ports, or has confiscated any such vessels) declare war against the said king, if that measure shall be agreeable to, and supported by, the courts of France and Spain." It is understood that the strictest union subsists between these two courts, and, in case Spain and France should think fit to attempt the conquest of the English sugar islands, the Congress have further proposed to furnish provisions to the amount of two millions of dollars, and to join the fleet employed on the occasion with six frigates, of not less than 24 guns each, manned and fitted for service, and to render any other assistance, which may be in their power, as becomes good allies, without desiring for themselves the possession of any of the said islands."

A few months before the date of this letter Arthur Lee, at the request of Messrs. Franklin and Deane, undertook a journey to Spain. He arrived at Bilboa in March, though he was not provided with a special appointment, and appears to have had no other object than to obtain money and supplies. He was furnished with a letter and passports from the Spanish Minister at Paris, but the king would not allow him to proceed to Madrid from the extreme difficulty of maintaining his incognito. Don Diego Gardoqui was, how-

\* In consequence of the celebrated Methuen treaty, the greater part of the Portuguese commerce had fallen into the hands of the English, and those two countries were in a strict alliance and friendship. In the letter of B. Franklin quoted in the text, the reader will probably be struck with the uncommon willingness of the Congress to engage in foreign connexions, though the motives and reasons of such measures are abundantly apparent and satisfactory. Still it is remarkable, how few they formed; how entirely they escaped from every sort of entangling league and association, with the single exception of the provision respecting the guaranty in the treaty of '78 with France. This circumstance is the more extraordinary, because England was at that time the common enemy of Europe, and an almost general armed confederation had been entered into against her. America is indebted for this good fortune, not only to the skill and discretion of her rulers, but to her "distant and detached situation," and to a very common impression in Europe of her weakness and inability to render valuable assistance to any cause.

ever, sent from the capital to meet Lee, and a correspondence, somewhat protracted, took place between them on the subject of contracts for supplies and shipments, made on American account at Bilboa. The same general difficulty, that prevented other powers in Europe from joining the colonies, threw Spain, also, into a state of very equivocal neutrality, though at this early period, enough had been done to manifest her favourable disposition. An official, though secret, intercourse with the government was allowed Mr. Lee, and in the month of April 1777 the Duke Grimaldi, himself, delivered into the hands of the American agent at Vittoria the following paper—"You have considered your own situation and not ours. The moment has not come for us. The war with Portugal, France unprepared, our treasure from America not arrived, make it improper for us to declare immediately. These reasons will probably cease within a year, and then will be the moment."

A single observation is suggested by the secret visits of the American agents in the beginning of the Revolution to the different courts of the European continent. The peace, maintained by the greater part of these States with England, was exceedingly hollow, and if one might judge of what was about to overtake that nation from the political symptoms, privately disclosed, it was obvious her downfall was near at hand. The truth is, several of those governments still felt the ancient grudges of the two last wars, rankling in their cabinets, and all were alarmed at the sudden development of English resources and prosperity, and the great accession of power and territory, that followed the treaty of 1763. But the corruption, the canker, the decay preying upon and wasting France, itself, saved England from that terrible day.

At the same time, Spain showed a great disinclination to take an open part in the war declared in 1778; and the measures, adopted by France to induce her to this step, were at first received with uncommon coolness. Fatigued by her former contests, though of a recent date, and holding, herself, extensive and valuable foreign possessions, Spain did not

view the struggles of the Americans with entire complacency. A writer of the day has prophesied, with remarkable exactness, the time and manner of the emancipation of Spanish America;\* and though the Spanish government might have had little faith in such predictions, it could not have been ignorant that the example of the North American colonies would have been attended with pernicious consequences to the metropolises of the old world. France exceedingly desired the assistance of Spain in this business, particularly as the navies of the two countries were, united, greatly superior to that of England.† The French king even wrote, in the beginning of the year, letters in his own hand to his catholic majesty, urging him to enter into the coalition :

“ England, our common and inveterate enemy, has been engaged for three years in a war with her colonies. We have agreed not to take a part in it, and, considering both parties as English, we have made the commerce of our state free to whoever should find his advantage in it. In this way America has provided herself with those arms and munitions, of which she was in want. I do not speak of the aid we have given that country in money and other articles, the whole having been done in the ordinary course of commerce. England has shown some vexation at this circumstance, and we are not ignorant that she will sooner or later revenge herself. This was the situation of the business the last November. The destruction of Burgoyne and the embarrassments of Howe have changed the face of things. America is triumphant; England is cast down. But her vast marine is still entire, and having abandoned the idea of conquering the colonies, she has resolved to form an alliance with them. All parties in England are agreed in this particular. Lord North has himself announced a plan of pacification. It does not much signify to us, whether he or any other minister is in place, actuated by different motives, they will still

\* Pownal.

† The combined fleets, commanded by Count d'Orvilliers, consisting of 66 sail of the line, besides frigates, appeared the next year in the English channel. This was the most numerous and formidable armament ever seen on those coasts.



unite against us. *It is very important to prevent the reunion of the colonies with the mother country."*

The answer of the king of Spain, Charles III. was extremely cold and circumspect; he was naturally of a pacific turn, then much advanced in life, and not disposed to disturb the remainder of his days by a destructive war. He appears, also, to have been offended in not having been consulted respecting the treaties made by France with the United States; as the family compact of 1761 entitled him to this attention and privilege. Determined to avoid hostilities, Spain despatched instructions to her minister at London, to offer the mediation of his court. But England, having required that France should retire altogether from the contest, preparatory to negotiation, and France, on her side, demanding that England should recognise the independence of the thirteen colonies, the Spanish minister, the Count d'Almadovar, found it impossible to reconcile terms so entirely at variance. But the efforts of Spain, to obtain an accommodation, did not end on the occasion of this first disappointment. Three other plans for an arrangement, proposed by her, successively failed. England could not forgive France for her interference in the affairs of North America, and, while that country remained the ally of the United States, she resolutely rejected all attempts at negotiation. In June '79, M. d'Almadovar withdrew from the court of St. James; and England having already committed acts of violence on the Spanish dominions, his catholic majesty could no longer avoid the obligation of the treaty, establishing the family compact. War was accordingly declared in June of the same year.\* This declaration was made in consequence

\* Spain was probably induced to join the league, from the expectation she had of recovering her lost possessions. Immediately after the rupture, a Spanish force took possession of Baton Rouge, and finally conquered the whole of West Florida. The terms on which Spain proposed her mediation to England will be found in a letter of April 3, 1779 of M. de La Luzerne to Congress. On the subject of the invasion of Florida, it, also, appears from the same correspondence, that in Nov. 1779 a Spanish officer, Don Juan de Mirailles, applied,

of a convention concluded with France in the preceding April. The independence of the Thirteen States was, however, not acknowledged in this instrument, though, by the treaty between France and America, Spain was entitled to accede to the alliance whenever she thought fit, and to have the benefit of all the stipulations.

In September 1779, John Jay of New-York was elected by Congress, minister plenipotentiary to negotiate a treaty with Spain. Besides the general terms of his commission, Mr. Jay was furnished with particular instructions to guaranty the two Floridas to Spain on condition that the free navigation of the Mississippi should be secured to this country.

In the autumn of '79, Mr. Jay embarked for Europe in a vessel with M. Gerard, the French minister, then on his return to France. Soon after leaving the coast, they had the misfortune to meet with violent gales, and their ship having lost its masts, they were driven to the southward, and for shelter put into Martinique. Mr. Jay succeeded, however, in reaching Cadiz in safety the beginning of the next year. From that place he sent William Carmichael, his secretary, to Madrid with a letter of introduction to the minister Galvez, with instructions to ascertain, whether the American envoy would be received, and on what terms, by the Spanish court. Anticipating that the secretary might be led into some discourse on American affairs, Mr. Jay charged him "to do justice to Virginia and the western country near the Mississippi. Recount their achievements against the savages, their growing numbers, extensive settlements and aversion to Great Britain for attempting to involve them in

by the intervention of the French minister, to Congress for aid in subduing, in conjunction with a naval and land force of his catholic majesty, Pensacola and St. Augustine. And in a report, made by a committee of Congress on this application, it was recommended that the United States should employ a considerable number of troops for that purpose. The failure in October of the attack on Charleston, and the state of things in the whole southern department, probably, defeated the project.

the horrors of Indian warfare. Let it appear also, from your representations, *that ages will be necessary to settle those extensive regions.*" The Spanish court granted leave to Mr. Jay to come to Madrid, but not in a formal manner, which could not be allowed, till a public acknowledgment of the independence was accomplished. Spain, being then embarked in the common war with England and the ally of France, also the ally of the United States, this course is somewhat difficult to explain. "His majesty" continues the Count Florida Blanca in his letter of February 24, 1780, written to Mr. Jay on this occasion, "thinks it necessary, in the first place, that the manner, form, and the mutual correspondence should be settled, upon which that union must be founded, the United States desires to establish with this country."

In a long letter, composed with care and ability, Mr. Jay presented a full and just view of the situation of the United States. The document was communicated in April to the Spanish government; and even thus early after his arrival at Madrid, the Count Florida Blanca informed the American envoy, that the only obstacle to a successful negotiation was the recognition of the Mississippi. Spain, at that period, seems to have formed a plan for getting entire possession of the shores of the Gulf of Mexico, and of excluding all nations from its waters, a project by no means difficult of execution, considering the extent of her dominion in that quarter.—Mr. Jay had been received by the foreign ministers at Madrid with uncommon coldness;—in other respects he was well satisfied, during the first few months, with his situation. His correspondence with the minister was principally confined to the drawing of bills to pay for the cloths bought by Arthur Lee. And at one time the king offered the envoy his personal responsibility to enable him to negotiate a loan for 150,000 dollars. "Thus things" remarks Mr. Jay in a letter of July 5, 1780, "were apparently in a good train, when the news of the loss of Charleston became credible. The effect of it was as visible the next day as that of a hard night's frost on young leaves." From this moment the minister

met with delay and cold looks on every hand, and de Florida Blanca declared nothing could be done, till the arrival of a person at Madrid, who was to succeed M. Mirailles at Philadelphia, an individual employed by Spain to give them information, and who, it appears, had died that spring in the United States. In the mean time, Mr. Jay was extremely embarrassed by the bills drawn on him by Congress;—for many days he was threatened with protests,—the credit of the country being at the lowest possible ebb. Towards the end of the summer, the king again offered his name for \$150,000, but no cash could be obtained on the credit of it, either in France or England; and in September 1780, we find that \$50,000 of bills still remained without acceptance. Some intimations were, indeed, given that money would be furnished, if the United States would relinquish their claim to the Mississippi. "The Count said this morning (September 23, '80) with warmth, that unless Spain could exclude all nations from the Gulf of Mexico, they might as well admit all. That the king would never relinquish that object, that the ministry regarded it as the principal thing to be obtained by the war, and that obtained he should be easy, whether Spain obtained other cessions or not. The acquisition was much more important than that of Gibraltar." This expression fully explains the hesitation manifested by the Court of the Escorial, to engaging in an alliance with the United States.

The English government made an attempt this summer to detach Spain from the alliance with France. Mr. Richard Cumberland, well known as the author of various productions, principally of a literary description, was employed in a secret mission to Madrid. In the entertaining *Memoirs*, written of himself, he has given an account of this business, though we have no means of ascertaining the precise proposals he was authorized to offer.

"My destination was to repair to the neutral port of Lisbon, there to abide whilst the Abbe Hussey, chaplain to his Catholic Majesty, proceeded to Aranjuez, and by the advice which he should send me, I was to be governed in the alternative of either going

to Spain, for the purpose of carrying my instructions into execution, or of returning home by the same ship that conveyed me thither, which was ordered to wait my determination for the space of three weeks, unless dismissed or employed by me within that period. I was to take my wife and two daughters, Elizabeth and Sophia with me, on the pretence of travelling into Italy upon a passport through the Spanish dominions."

By a letter to the Secretary of State, dated Lisbon, June 7, 1780, Mr. Cumberland appears to have departed somewhat from his instructions by going into Spain. Be that as it may, he arrived the 18th of the same month at Aranjuez, and the next day was not only visited by the principal persons of the government, but the same evening had an interview with the first minister of state. We mention these circumstances, in themselves insignificant, to show that his visit was neither unexpected nor disagreeable to the Spanish court.

"I will only say, that my treaty was in shape, and such as my instructions would have warranted me to transmit and recommend. Spain had received a recent check from Admiral Rodney, Gibraltar had been relieved with a high hand; she was also upon very delicate and dubious terms with France. The crisis was decidedly in my favour, my reception flattering in the extreme, the Spanish nation was anxious for peace, and both court, ecclesiastics and military anti-gallican. The minister did not lose an hour after my arrival, but with much apparent alacrity in the cause immediately proceeded to business. I never had any reason upon reflection to doubt the sincerity of Count Florida Blanca at this moment, and verily believe we should have advanced the business of the preliminaries, if the fatal news of the riots\* had not most critically come to hand that very day, on which by the minister's own appointment we were to meet for fair discussion of the terms, while nothing seemed to threaten serious difficulty or disagreement between us."

Mr. Cumberland remained till November 1781, neither accomplishing the object of his mission, nor, as appears from

\* Lord George Gordon's No popery mobs are probably meant.

his memoirs, giving satisfaction to his own government. He does not allude upon any occasion to Mr. Jay or the American subject; but from an expression in a letter to the earl of Hillsborough of December 9, 1780, it seems he was directed not to make the "Rebellion" of the colonies matter of negotiation. It is well known England took the same ground with France. Mr. Cumberland's negotiation appears to have failed on account of some difficulty respecting Gibraltar. But that Spain was in the secret of his mission is evident from the circumstance, that Count Florida Blanca informed Mr. Jay, he had come to Madrid on account of the health of his daughter, a pretence he had adopted by direction of his own government.

Notwithstanding Mr. Cumberland failed, Mr. Jay was not accredited; and it was not till he had been ten months at Madrid, that he obtained a formal, serious conference on the subject of a treaty, a very remarkable circumstance, as Spain had now been engaged in the war more than two years. The invariable excuse offered for this delay was the too pressing affairs, the vexatious engagements of the minister. (*Ses affaires toujours pressantes, ses incommodités habituelles.*) But no propositions were even then made by the Spanish government. In September 1781, Mr. Jay submitted the following, among many other stipulations, for a treaty, which we notice only on account of the extremely valuable privilege and right it was proposed to abandon. This was done by order of Congress, perhaps, as events have shown, the most disastrous, fatal proposition ever made by this country. "The United States shall relinquish to His Catholic Majesty, and in future forbear to use, or attempt to use, the navigation of the Mississippi from the 31st degree of north latitude, that is, from the point where it leaves the United States, down to the ocean."

The treatment of the American envoy at Madrid was sensibly felt by this country. One of the commissioners at that time in Europe, observes, "the slight Spain has put upon our proffered friendship is very disreputable to us, and of course hurtful to our affairs elsewhere." And in February

1782 Mr. Jay himself remarked : " The conduct of this Court bears few marks of wisdom. The fact is, they have little money, less credit, and very moderate talents." The difficulty of procuring money for the bills, drawn by Congress, was the greatest and most constant vexation to which our ministers in Europe were exposed. No one suffered more in this way than Mr. Jay. And at last being totally unable to procure the necessary funds, he was subject to the humiliating measure of recording a protest on a considerable amount of the draughts.

" Mr. Jay declares, that when he accepted the bills hereunto annexed, he had good reasons to expect to be supplied with the funds necessary to pay them. That he has been disappointed in the expectations he had been encouraged to entertain on this subject, and that his endeavours to obtain money, both here and elsewhere, have been unsuccessful, though the bills remaining to be paid, together with all other engagements, do not exceed £25,000. That these disappointments being unexpected, he cannot for want of time have recourse to Congress, and therefore finds himself reduced to the mortifying necessity of permitting the bills to be protested." " The national pride of the French minister," observes Mr. Jay, " was hurt by this event (protest). I am sure he regretted it as disreputable and impolitic. He told me this winter, he believed Spain wished to modify our independence, and to keep herself in a situation to mediate between us and England at a general peace."

The money for these bills was at last procured from France ; after all, the only power in Europe that rendered us any solid, seasonable assistance.

Mr. Jay remained in Madrid till May '82, but he was never accredited, nor admitted to any continued discussions on the subject of a treaty. His intercourse with the Spanish government was restricted to an irritating negotiation, respecting a small loan of money and the redemption of the Congress bills. He appears all along to have considered it doubtful, whether the United States would not be compelled to abandon the Mississippi for an acknowledgment of independence by Spain ; he thought, also, that Spain, notwith-



standing the wishes of France, was by no means ready for a peace, having her eye fixed upon Gibraltar in Europe, as on the Gulf of Mexico in America. Early in the spring the news from England proved favourable to the Americans; and it being known at Madrid, that the minister at Paris had obtained from France a loan of 6,000,000 of livres, Mr. Jay had the agreeable surprise of receiving one morning a note from the Count Florida Blanca, in these words: "The Count de Florida Blanca has been to take the orders of your Excellency for Aranjuez, where he hopes to have the honour of the company of your Excellency at his table every Saturday after the 11th of May ensuing;" the first note of the sort the American minister had received, and, according to the customs of the Spanish court, a place at the Count's public table at Aranjuez was considered equivalent to a recognition—an official proceeding. But the Spanish Secretary of State soon repented of this indiscretion, and, as had happened to Dr. Franklin at Paris in a somewhat similar accident, the mistake was immediately attributed to the fault of the Count's messenger. No one else, indeed, could be blamed. The invitation was in the hand writing of de Florida Blanca's private secretary, and was delivered by a bearer who had never made a mistake of the kind, the whole time Mr. Jay was in Madrid. The Count, also, authorized the French minister to say to Mr. Jay, that he had obtained the consent of the king, on account of his Majesty's respect for the American people, to invite Mr. Jay to his table "*as a private gentleman of distinction of that country.*" But as Mr. Jay held another station besides that of a private gentleman, he never had the honour of dining with the Count.

Spain was not willing to accede to the alliance between France and the United States; for she felt apprehensive, undoubtedly, for her possessions in Florida and Louisiana. She obviously anticipated, at that early hour, many of the difficulties that have since arisen, and refused to grant to the United States the free navigation of the Mississippi, or to establish that river as the western boundary. This business will be better understood by extracting part of the letter of

instructions written by Congress to Mr. Jay in October '80. The reader will perceive, how very early, in the history of this country, those intricate questions arose with Spain, that subsequently were attended with such sore and increasing trouble.

"It is a fundamental principle, in all lawful governments, and particularly in the constitution of the British empire, that all the rights of sovereignty are intended for the benefit of those, from whom they are derived, and over whom they are exercised. It is known, also, to have been held for an inviolable principle by the United States, while they remained a part of the British empire, that the sovereignty of the king of England, with all the rights and powers included in it, did not extend to them in virtue of his being acknowledged and obeyed as king by the people of England, or of any other part of the empire, but in virtue of his being acknowledged and obeyed as king of the people of America themselves, and that this principle was the basis, first of their opposition to, and finally of their abolition of, his authority over them. From these principles it results, that all the territory, lying within the limits of the states as fixed by the sovereign himself, was held by him for their particular benefit, and must equally, with his other rights and claims in quality of their sovereign, be considered as having devolved on them in consequence of their resumption of the sovereignty themselves. In support of this position, it may be further observed, that all the territorial rights of the king of Great Britain within the limits of the United States, accrued to him from the enterprizes, the risks, the sacrifices, the expense in blood and treasure of the present inhabitants and their progenitors. To Spain, claiming the territory about the Mississippi by the right of conquest, it is answered, that a right founded on conquest being only coextensive with the objects of conquest, cannot comprehend the circumjacent territory. That if a right to the said territory depended on the conquests of the British posts within it, the United States have already a more extensive claim to it than Spain can acquire, having, by the success of their arms, obtained possession of all the important posts and settlements on the Illinois and Wabash, rescued the inhabitants from British domination, and established civil government in its proper form over them. They have, moreover, established posts on the strong and commanding situation near the

mouth of the Ohio, whereas, Spain has a claim by conquest to no post above the northern bounds of West Florida, except that of the Natchez, nor are there any other British posts below the mouth of the Ohio for their arms to be employed against. That, whatever extent ought to be ascribed to the right of conquest, it must be admitted to have limitations, which in the present case, exclude the pretensions of his catholic majesty. If the occupation by the king of Great Britain of posts within the limits of the United States, as defined by charters derived from the said king, when constitutionally authorized to grant them, makes them lawful objects of conquest to any other power than the United States, it follows, that every other part of the United States, that now is, or may hereafter fall into the hands of the enemy, is equally an object of conquest. Not only New-York, Long Island, and the other islands, in its vicinity, but almost the entire states of South Carolina, and Georgia might, by the interposition of a foreign power at war with their enemy, be forever severed from the American confederacy, and subjected to a foreign yoke. But is such a doctrine consonant to the rights of nations, or the sentiments of humanity? Does it breathe that spirit of concord and amity, which is the aim of the proposed alliance with Spain? Would it be admitted by Spain, herself, if it affected her own dominions? Were, for example, a British armament by a sudden enterprize, to get possession of a sea port, a trading town, or maritime province in Spain, and another power at war with Britain should, before it could be reconquered by Spain, wrest it from the hands of Britain, would Spain herself consider it as an extinguishment of her just pretensions? Or would any impartial nation consider it in that light? As to the proclamation of the king of Great Britain of 1763, forbidding his governors in North America to grant lands westward of the sources of the rivers falling into the Atlantic Ocean, it can by no rule of construction militate against the present claims of the United States. That proclamation, as is clear both from the title and tenor of it, was intended, merely to prevent disputes with the Indians and an irregular appropriation of vacant land to individuals, and by no means either to renounce any parts of the cessions made in the treaty of Paris, or to affect the boundaries established by ancient charters. On the contrary, it is expressly declared, that the lands and territory prohibited to be granted, were within the

sovereignty and dominion of that crown, notwithstanding the reservation of them to the use of the Indians."———"The river Mississippi will be a more natural, more distinguishable, and more precise boundary than any other that can be drawn eastward of it, and consequently will be less liable to become a source of those disputes which too often proceed from uncertain boundaries between nations. As this territory lies within the charter limits of particular states, and is considered by them as no less their property than any other territory within their limits, Congress could not relinquish it without exciting discussions between themselves and those states. The territory in question contains a number of inhabitants, who are at present under the protection of the United States, and have sworn allegiance to them. These could not, by voluntary transfer, be subjected to a foreign jurisdiction, without manifest violation of the common rights of mankind, and of the genius and principles of the American government."———"Congress have the greater hopes, that the pretensions of his catholic majesty on this subject will not be so far urged as to prove an insuperable obstacle to an alliance with the United States, because they conceive such pretensions to be incompatible with the treaties subsisting between France and them, which are to be the basis and substance of it. By article eleventh of the treaty of alliance, eventual and defensive, the possessions of the United States are guarantied to them by his most christian majesty. By article 12th of the same treaty, intended to fix more precisely the sense and application of the preceding article, it is declared that this guaranty shall have its full force and effect the moment a rupture shall take place between France and England. The next object of the instructions is the free navigation of the Mississippi for the citizens of the United States, in common with the subjects of his catholic majesty. On this subject, the same inference may be made from article seventh of the treaty of Paris, which stipulates this right in the amplest manner to the King of Great Britain, and the devolution of it to the United States, as was applied to the territorial claims of the latter. Besides, as the United States have an indisputable right to the possession of the east bank of the Mississippi for a very great distance, and the navigation of that river will essentially tend to the prosperity and advantage of the citizens of the United States that may reside on the Mississippi, or the waters running

into it, it is conceived that the circumstance of Spain being in possession of the banks on both sides near its mouth cannot be deemed a natural or equitable bar to the free use of the river. But, notwithstanding the equitable claim of the United States to the free navigation of the Mississippi, and its great importance to them, Congress have so strong a disposition to conform to the desires of his catholic majesty, that they have agreed that such equitable regulations may be entered into, as may be requisite security against contraband, provided the point of right be not relinquished, and a free port or ports, below the thirty-first degree of north latitude, and accessible to merchant ships, be stipulated to them. The reason why a port or ports thus described, was required must be obvious. Without such a stipulation, the free use of the Mississippi would, in fact, amount to no more than a free intercourse with New-Orleans and other parts of Louisiana. From the rapid current of this river, it is well known, that it must be navigated by vessels of a peculiar construction, and which will be unfit to go to sea. Unless, therefore, some place be assigned to the United States, where the produce carried down the river, and the merchandise arriving from abroad may be deposited till they can be respectively taken away by the proper vessels, there can be no such thing as a foreign trade. There is a remaining consideration respecting the navigation of the Mississippi, which deeply concerns the maritime powers in general, but more particularly their most christian and catholic majesties. The country, watered by the Ohio, with its large branches, having their sources near the lakes on one side, and those running north-westward and falling into the other side, will appear from a single glance on a map to be of vast extent. The circumstance of its being so finely watered, added to the singular fertility of its soil, and other advantages presented by a new country, will occasion a rapidity of population not easy to be conceived. The spirit of emigration has already shown itself in a very strong degree, notwithstanding the many impediments which discourage it. The principal of those impediments is the war with Britain, which cannot spare a force sufficient to protect the emigrants against the incursions of the savages. In a very few years after peace shall take place, this country will certainly be overspread with inhabitants. In like manner, as in new settlements, agriculture, not manufactures, will be their employment.

They will raise wheat, corn, beef, pork, tobacco, *hemp*, flax, and in the southern parts, perhaps, rice and *indigo*, in great quantities. On the other hand, their consumption of foreign manufactures will be in proportion, if they can be exchanged for the produce of their soil. There are but two channels through which such commerce of the west can be carried on; the first is down the river Mississippi, the other up the rivers having their sources near the lakes, thence, by short portages to the lakes on the rivers falling into them, through the lakes and down the St. Lawrence. The first of these channels is manifestly the most natural and by far the most advantageous. Should it however, be obstructed, the second will be found far from impracticable.

"So fair a prospect could not escape the commercial sagacity of Great Britain. She will embrace it with avidity. She would cherish it with the most studious care, and, should she succeed in fixing it in that channel, the loss of her exclusive possession of the trade of the United States might prove a much less decisive blow to her maritime preeminence and tyranny than has been calculated."\*

It ought to be mentioned in this place, that during Mr. Jay's negotiations at Madrid, Spain had no minister or representative in this country; and when he left that Court in the year '82, Mr. Carmichael, his secretary, was intrusted by him with the affairs of the legation; but he was not received in an official manner till February 1783, though the provisional articles of the treaty of peace had been signed the preceding November. He was accredited as a *chargé d'affaires*, and in his correspondence appears to consider he was principally indebted for that arrangement to the influence and friendly offices of General la Fayette,† who happened, at

\* These instructions are long and valuable. We have only ventured to extract a few detached portions of them. The state papers on the Mississippi and the western boundary, are prepared with uncommon care and ability;—they are, probably, not surpassed by any other documents that the Congress of the confederation, during the war, have left on record;—all, titles to the gratitude, applause and admiration of posterity.

† It is somewhat out of place to insert the following letter in this part of the work, but as we have just met with it, and have no recol-

the time, to be at Madrid. On the 22d February Mr. Carmichael dined with the diplomatic body at the Prado, a circumstance, that exceedingly surprised some of the foreign ministers, who did not anticipate a formal connexion between Spain and the United States was so near at hand.

On the 30th of August 1783, Mr. Carmichael's presentation took place.

"On the day appointed for my presentation, I waited on his Excellency, the Count de Florida Blanca, and from his house, accompanied by his servant, whom he had the politeness to send with my own, I paid my visits to the principal ladies and officers of the Palace. This ceremony finished, I went to the King's apartment, where the minister appointed me to meet him. When his Majesty arose from the table, the Count presented me as chargé d'affaires of the United States. As I had been informed that the King doth not love long harangues, I contented myself with expressing to his Majesty my satisfaction in being the first of my countrymen, who had the good fortune to assure him of their

lection of having seen it in print, its uncommon interest will serve, we hope, as an apology for introducing it here ;—it is from the secret correspondence.

" PARIS, 25th May 1777.

"To the Secret Committee.

"The Marquis de la Fayette a young nobleman of great family connexions here, and great wealth, is gone to America in a ship of his own, accompanied by some officers of distinction, in order to serve in our armies. He is exceedingly beloved, and every body's good wishes attend him ; we cannot but hope he may meet with such a reception as will make the country and his expedition agreeable to him. Those, who censure it as imprudent in him, do, nevertheless, applaud his spirit, and we are satisfied that the civilities and respect that may be shown him will be serviceable to our affairs here, as pleasing not only to his powerful relations and to the Court, but to the whole French nation. He has left a beautiful young wife, and for her sake particularly we hope that his bravery and ardent desire to distinguish himself, will be a little restrained by the General's prudence, so as not to permit his being hazarded much but on some important occasion."

" BENJ. FRANKLIN,

" SILAS DEANE."



desire to cultivate his amity. He answered me in a gracious manner and with a smiling countenance, saying he hoped I should have frequent occasions for making him the same assurances. The Royal Family, dining at the same hour, and separately, and the same etiquette being observed, viz. the presentation after dinner, it required some days to finish the business, the Count Florida Blanca accompanying me more than three quarters of an hour each visit, with a politeness and good nature, rarely found in men, who have so many important occupations on their hands. The Prince of Asturias spoke of me during the dinner as of a person he had long known, and when I was presented, he told me so. The Princess, who was present, spoke to me six or seven minutes in French and Spanish, and among other things said, I ought to like Spain, because she was told, I was much esteemed by the Spaniards. I replied, the only title I had to their esteem was my well known regard for the nation."

In 1785, (July) a chargé d'affaires, D. Diego Gardoqui, was received and accredited by Congress, from Spain. Upon the arrival of D. Diego Gardoqui at Philadelphia, the negotiation was transferred to this country, and Mr. Jay, then Secretary of State for Foreign Affairs, was authorized, by a special commission of Congress, to treat respecting the boundaries. The subject was beset with a new difficulty, from the circumstance, that England, in her treaty of the year '83 with this country, acknowledged the claim of the United States to the lands bordering on the Mississippi, to the north of the northern boundary of West Florida, and transferred all her right in the navigation of that river. Shortly after the treaty, the Spanish government protested against the transfer, as in their opinion the English had ceded what they did not own. The arrangement with Spain remained in the hands of the Secretary of State till the dissolution of the Confederation.

This was the most difficult, intricate, and vexatious negotiation undertaken by that government. Separate from the delays, to which all discussion with the court of the Escorial is necessarily incident, and, in this case, from the unreasonable demands made by Spain, the business was farther and

greatly embarrassed by a division of sentiment in the American Congress;—a division unfortunately arising altogether from local influence and considerations. The northern portion of the confederacy, that is to say, New-Hampshire, Massachusetts, Rhode-Island, Connecticut, New-York, New-Jersey, and Pennsylvania, were in favour of concluding a commercial treaty with Spain upon terms of reciprocity, and upon condition of forbearing the use of the Mississippi for twenty-five or thirty years, below the northern boundary of the United States to the ocean. This proposition, as has been seen, was actually made by Mr. Jay to Spain. The arrangement did not, of course, include access to the possessions of Spain in the new world; for it had always been one of the fundamental maxims of that court to exclude all mankind from their American shores. A treaty of this description would certainly have been favourable to America, if the position, then assumed, had been correct, namely, that the navigation of the Mississippi was at that period of little importance; that it would not become valuable in twenty-five or thirty years; and that it could not be called a sacrifice to forbear the use of a thing we do not want. These doctrines, formally maintained in Congress thirty-five years ago, will, perhaps, create no surprise in the minds of those, who are acquainted with the situation of the western country during the early discussion with Spain. The navigation of the Mississippi certainly did then appear of trifling value, and, considering the amount of population in the Atlantic states, the great quantities of land, there still unoccupied, the little accurate knowledge possessed of the territory beyond the Alleghany, there were slight reasons, indeed, for anticipating the vast wealth and population, to which that district has since so rapidly risen. In some of the states, that are now powerful, and have a numerous population, there was not at this period even a settler. With Spain\*

\* Spain claimed both the Floridas, and contended that West Florida extended up the Mississippi higher than the limit indicated in the treaty of this country with England, though in the year '86 she had not clearly determined upon what boundary she should fix.

at the south, and England at the north, both powerful nations, and neither desirable neighbours, it was certainly difficult to imagine what temptations could attract into unexplored regions emigrants from the borders of the Atlantic.

This appears to have been the first question, on which the states were seriously divided according to their geographical limits. The matter occupied an unusual portion of the attention of Congress;—a great variety of propositions were made in relation to it, but no change took place in the votes. The five states south of Pennsylvania, viz: Maryland, Virginia, North Carolina, South Carolina, and Georgia, were constantly opposed to the northern, and consequently in the minority. We have already said, that the Secretary for Foreign Affairs was directed to prepare a treaty on the basis of a perfect commercial reciprocity, for a term of twenty-five or thirty years, and to stipulate a forbearance of the navigation during that period, though the right to the navigation was by no means intended to be ceded by the act.\* On this question the northern portion of the confederation prevailed. It was vehemently and in a most persevering manner, opposed by the south; but part of the opposition was founded in doctrines, that would not at this day be considered sound by any division of the Union;—sentiments, entirely at variance with the provisions of the treaty of commerce made with France, with the general principles, attempted to be inserted in all our treaties with Europe, and with the obvious policy of the country,—more especially that, which administrations are now attempting to inculcate. We allude to the objection made to the doctrine of reciprocity, proposed as the basis of the Spanish treaty. We shall extract a paragraph from a report made on the subject:

“How contrary would such a stipulation (reciprocity) be to the policy of Great Britain, to the policy of her navigation act, an act, which gives to her own subjects in their intercourse with all other

\* The resolution directing him to conclude a treaty on this basis, as an ultimatum, was adopted by Congress on the 30th August '86, though he was instructed to insist on the boundaries.

nations, the high privileges and immunities, they do not enjoy. To the wisdom of this act, and her other regulations in commerce, it is owing, that she hath attained to such a height of power and grandeur on the seas, as to be at the same time the terror and the admiration of the world, that her subjects have obtained such commercial wealth and astonishing resources, as to be able to support her in the most splendid enterprizes, and the longest and most difficult wars, that her councils could devise, or the change of fortune expose her to."

It is somewhat unusual to hear the celebrated commercial regulations of Cromwell,\* regulations within a few years publicly condemned by one of the wisest, most ingenuous, as well as experienced statesmen England has ever known, receive such remarkable applause in a country, whose whole ambition and policy have been to break through the navigation acts and colonial systems of the European powers, and whose greatest wealth has been accumulated under the relaxations of those measures, rendered inevitable by wars, or the progress of sound views on commercial subjects. But it was a just ground of objection, that the proposed Spanish treaty was not, in reality, reciprocal; for we were to have those advantages only in Spain and the Canaries; but were excluded from the Phillipines and the Spanish possessions in America. Another ground was, also, perfectly legitimate and reasonable, and, as time has proved, unanswerable:

"As to the surrender or forbearance of the use of the navigation of the Mississippi for the term proposed and for the consideration proposed, (the right of the United States to dismember the government being out of the question) it is inadmissible upon the principle of the right, and, independent of the right, upon the highest principles of national expedience, which apply even if the commercial project were an advantageous one. The states, who have ceded them, and the confederacy at large, look up to the western lands as a substantial fund for the discharge of the public debt. The value of these lands will depend, in a great measure,

\* The "act of navigation," considered as the foundation of all subsequent proceedings, was originally passed October 9th, 1651, and then fully adopted on the restoration of Charles II.

on the navigation of the Mississippi. By the contract with Virginia, it is stipulated, that the western country shall be divided into states, and admitted with the rights of the original states into the confederacy. The spirit of this compact is, that the territory should retain all its rights, and have them promoted under the patronage of Congress. This act would, therefore, be a direct violation of it, and have a tendency to fix the weight of population on one side of the continent only."—"By the second article of the confederation of these United States, each state retains its sovereignty, freedom, and independence, and every power, jurisdiction and right, which is not therein expressly delegated to the United States in Congress assembled. This is a fundamental law of the nation, and the powers granted in the ninth article, to make treaties, must be construed in subordination to it. No treaty, even of peace, entered into by the United States in Congress assembled, extending to a cession or suspension of the rights of any of the states without their consent, can, therefore, be valid, much less can such a treaty of commerce, which in point of political necessity can never be so pressing."

The report of a commercial treaty with Spain produced an alarming sensation in the west.\* The Spaniards had

\* "A copy of a letter from a gentleman at the falls of Ohio, to his friend in New England, dated December 4, 1786.

"Dear sir, politics, which a few months ago were scarcely thought of, are now sounded aloud in this part of the world, and discussed by almost every person. The late commercial treaty with Spain, in shutting up, as it is said, the navigation of the Mississippi, for the term of twenty-five years, has given this western country a universal shock, and struck its inhabitants with an amazement. Our foundation is affected; it is therefore necessary that every individual exert himself to apply a remedy. To sell us, and make us vassals to the merciless Spaniards, is a grievance not to be borne. The parliamentary acts which occasioned our revolt from Great Britain were not so barefaced and intolerable. To give us the liberty of transporting our effects down the river to New Orleans, and then be subject to the Spanish laws and impositions, is an insult upon our understanding. We know by woful experience that it is in their power, when once there, to take our produce at any price they please. Large quantities of flour, tobacco, meal, &c. have been taken there the last summer, and mostly con-

been prevented by the people from trading up the river; their goods at Vincennes and Illinois seized, and they, themselves, threatened with being driven from the mouth of the

fiscated. Those who had permits from their governor, were obliged to sell at a price he was pleased to state, or subject themselves to lose the whole. Men of large property are already ruined by their policy. What benefit can you on the Atlantic shores receive from this act? The Spaniards from the amazing resources of this river can supply all their own markets at a much lower price than you possibly can. Though this country has been settling but about six years, and that in the midst of an inveterate enemy, and most of the first adventurers fallen a prey to the savages, and although the emigration to this country is so very rapid that the internal market is very great, yet the quantities of produce they now have on hand are immense. Flour and pork are now selling here at twelve shillings the hundred; beef in proportion; any quantities of Indian corn can be had at nine pence per bushel. Three times the quantity of tobacco and corn can be raised on an acre here that can be within the settlement on the east side of the mountains, and with less cultivation. It is therefore rational to suppose that in a very few years the vast bodies of waters in those rivers will labour under the immense weight of the produce of this rich and fertile country, and the Spanish ships be unable to convey it to market.

"Do you think to prevent the emigration from a barren country loaded with taxes and impoverished with debts, to the most luxurious and fertile soil in the world? Vain is the thought, and presumptuous the supposition. You may as well endeavour to prevent the fishes from gathering on a bank in the sea which affords them plenty of nourishment. Shall the best and largest part of the United States be uncultivated, a nest for savages and beasts of prey? Certainly not. Providence has designed it for some nobler purposes. This is convincing to every one who beholds the many advantages and pleasing prospects of this country. Here is a soil, richer to appearance than can possibly be made by art. Large plains and meadows without the labour of hands, sufficient to support millions of cattle summer and winter; cane, which is also a fine nourishment for them, without bounds. The spontaneous production of this country surpasses your imagination. Consequently, I see nothing to prevent our herds being as numerous here in time as they are in the kingdom of Mexico. Our lands to the northward of the Ohio for the produce of wheat, &c. will, I think, vie with the island of Sicily. Shall all this country now

**Mississippi.** The citizens expressed great indignation at the conduct of Congress; they considered themselves sold to the Spaniard, deserted by their government, and the boon offered them, of transporting their goods to the ware-houses of New-Orleans, was regarded, not only as a cruel insult, but as a treacherous sacrifice of property. Affairs had arrived at such a crisis, that men spoke seriously of throwing off their allegiance, and seeking the protection of a foreign country.

A remarkable emigration suddenly took place to the west at the close of the war. Great numbers of the inhabitants of the Atlantic states, oppressed with taxes and impoverished with debt, crossed the mountains, where they found land cheap, and a soil exceedingly rich; they met with an enemy in

be cultivated entirely for the use of the Spaniards? Shall we be their bondmen as the children of Israel were to the Egyptians? Shall one part of the United States be slaves, while the other is free? Human nature shudders at the thought, and freemen will despise those who could be so mean as to even contemplate on so vile a subject.

"Our situation is as bad as it possibly can be, therefore every exertion to retrieve our circumstances must be manly, eligible and just.

"We can raise twenty thousand troops this side the Alleghany and Apalachian mountains; and the annual increase of them by emigration, from other parts, is from two to four thousand.

"We have taken all the goods belonging to the Spanish merchants of post Vincennes and the Illinois, and are determined they shall not trade up the river, provided they will not let us trade down it. Preparations are now making here (if necessary) to drive the Spaniards from their settlements, at the mouth of the Mississippi. In case we are not countenanced and succoured by the United States (if we need it) our allegiance will be thrown off, and some other power applied to. Great Britain stands ready with open arms to receive and support us. They have already offered to open their resources for our supplies. When once reunited to them, "farewell, a long farewell to all your boasted greatness." The province of Canada and the inhabitants of these waters, of themselves, in time will be able to conquer you. You are as ignorant of this country as Great Britain was of America. These hints if rightly improved, may be of some service; if not, blame yourselves for the neglect."\*

\* Secret Journals of Congress, vol. 4, p. 320, &c.



the savages, and in the relentless, monopolizing system of the Spaniards. But nature had been so profuse in her best gifts to that region, and the Atlantic states were wasting under such an accumulation of debts, struggling with bad governments and highly excited parties, almost approaching, in some instances, to rebellion and anarchy, that settlers soon arrived in crowds on the banks of the great western rivers. While Congress were discussing the points of a treaty, a nation was created there. The question, touching the navigation of the Mississippi, was to them a vital one; and so remarkable is the water communication in that country, that the inhabitants, most deeply planted in the interior, farthest removed from the outlet of this "father of rivers," were equally concerned in the decision of this controversy. But it was not the navigation of the Mississippi alone, from which Spain intended to exclude the United States; her ambition reached, even, to confining them within the Alleghanies. As early as 1782 this design of that court was manifest;—Dr. Franklin mentions it in a letter to the Secretary for Foreign Affairs, and advises Congress to adhere both to the navigation and to the boundary of the Mississippi.

The confederation did not succeed in making a treaty or arrangement of any kind with Spain. That country appeared disposed to agree to nothing, or, in other words, she had not determined what she should claim. The time having nearly approached when the federal government was to be organized, no sort of progress having been made in the negotiation, and great uneasiness still existing in the public mind on the subject of the navigation, Congress dismissed this tedious and vexatious business in September '88, by the following resolution:

"Resolved, That the free navigation of the river Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such. Resolved, that no further progress be made in the negotiations with Spain by the Secretary for Foreign Affairs, but that the subject, to which they relate, be referred to the federal government, which is to assemble in March next."

At the organization of the federal government, Mr. Carmichael of Maryland, originally the secretary of Mr. Jay, remained at Madrid as chargé d'affaires of this country. He was not engaged in any negotiation, and our affairs with Spain remained, till the latter part of the year '91, in the situation in which they were left by the confederation. At that time, an intimation was officially given, that Spain was disposed to treat at Madrid on one of the subjects then unsettled, viz. the navigation of the Mississippi. This notice related to a matter of too great importance to this country to be neglected, though the former conduct of the Spanish court, or of the agents of that government in the United States, could not inspire much confidence that the business would be brought to a speedy or satisfactory termination. Commissioners were, however, appointed without delay to proceed to Madrid. Mr. Carmichael, and Mr. Short, then chargé at Paris, were named for that purpose, though their commission was afterwards extended to include the boundaries and a commercial arrangement. As to the latter part of it, the United States proposed to place Spain on the footing of the most favoured nation; and on that basis treaties then existed with France, Prussia, Sweden and Holland;—the former country was equally entitled to the privilege with either of these last named powers. Indeed, Spain was the only European nation, with the exception of France, that had declared war against England during the revolution, though, before the peace of '83, England became involved with Holland. The other points to regulate were those of the navigation and the limits of the Mississippi. We cannot do better than quote, from a report of the Secretary of State of the year '91, some remarks on one of these subjects, particularly as the navigation of the Mississippi was among the most important questions brought into discussion, since the independence of the country :

“ Our right to navigate the Mississippi from its source to where our southern boundary strikes it, is not questioned. It is from that point downwards only that the exclusive navigation is claimed by Spain; that is to say, where she holds the country on both sides, to wit, Louisiana on the west and Florida on the east.

" Our right to participate in the navigation of that part of the river also, is to be considered under

" 1. The treaty of Paris of 1763.

" 2. The revolution treaty of 1782-3.

" 3. The law of nature and nations.

" 1. The war of 1755-1763 was carried on jointly by Great Britain and the thirteen colonies, now the United States of America, against France and Spain. At the peace, a right was secured to the subjects of Great Britain to navigate the Mississippi in its whole breadth and length, from its source to the sea, and expressly that part which is between the island of New Orleans and the right bank of the river, as well as the passage both in and out of its mouth; and that the vessels should not be stopped, visited, or subjected to the payment of any duty whatsoever. These are the words of the treaty, ARTICLE VII. Florida was, at the same time, ceded by Spain, and its extent westwardly was fixed to the lakes Pontchartrain and Maurepas and the river Mississippi; and Spain received soon after from France a cession of the island of New Orleans, and all the country she held westwardly of the Mississippi, subject of course to our right of navigation between that country and the island previously granted to us by France. This right was not parcelled out to us in severalty, that is to say, to each the exclusive navigation of so much of the river as was adjacent to our several shores, in which way it would have been useless to all, but it was placed on that footing on which alone it could be worth any thing, to wit, as a right to all to navigate the whole length of the river in common. The import of the terms and the reason of the thing prove it was a right of common in the whole, and not a several right to each of a particular part. To which may be added the evidence of the stipulation itself, that we should navigate between New Orleans and the western bank, which, being adjacent to none of our states, could be held by us only as a right of common. Such was the nature of our right to navigate the Mississippi, as far as established by the treaty of Paris of 1763.

" 2. In the course of the revolutionary war, in which the thirteen colonies, Spain and France, were opposed to Great Britain, Spain took possession of several posts held by the British in Florida. It is unnecessary to enquire whether the possession of half a dozen posts scattered through a country of seven or eight hundred

miles extent could be considered as the possession and conquest of that country. If it was, it gave still but an inchoate right, as was before explained, which could not be perfected but by the relinquishment of the former possession at the close of the war; but certainly it could not be considered as a conquest of the river, even against Great Britain, since the possession of the shores, to wit, the island of New Orleans on the one side, and Louisiana on the other, having undergone no change, the right in the water would remain the same, if considered only in its relation to them; and if considered as a distinct right, independent of the shores, then no naval victories obtained by Spain over Great Britain in the course of the war gave her the colour of conquest over any water which the British fleet could enter. Still less can she be considered as having conquered the river, as against the United States, with whom she was not at war. We had a common right of navigation in the part of the river between Florida, the island of New Orleans, and the western bank, and nothing which passed between Spain and Great Britain, either during the war, or at its conclusion, could lessen that right. Accordingly, at the treaty of November 1782, Great Britain confirmed the rights of the United States to the navigation of the river, from its source to its mouth, and in January 1783, completed the right of Spain to the territory of Florida by an absolute relinquishment of all her rights in it. This relinquishment could not include the navigation held by the United States in their own right, because this right existed in themselves only, and was not in Great Britain. If it added any thing to the rights of Spain respecting the river, between the eastern and western banks, it could only be that portion of right which Great Britain had retained to herself in the treaty with the United States, held seven weeks before, to wit, a right of using it in common with the United States.

“ So that as, by the treaty of 1763, the United States had obtained a common right of navigating the whole river from its source to its mouth: so, by the treaty of 1782, that common right was confirmed to them by the only power who could pretend claims against them, founded on the state of war; nor has that common right been transferred to Spain by either conquest or cession.

“ 3. If we appeal to this, as we feel it written on the heart of man, what sentiment is written in deeper characters than that the

ocean is free to all men, and their rivers to all their inhabitants? Is there a man, savage or civilized, unbiassed by habit, who does not feel and attest this truth? Accordingly, in all tracts of country united under the same political society, we find this natural right universally acknowledged and protected by laying the navigable rivers open to all their inhabitants. When their rivers enter the limits of another society, if the right of the upper inhabitants to descend the stream is in any case obstructed, it is an act of force by a stronger society against a weaker, condemned by the judgment of mankind. The late case of Antwerp and the Scheld was a striking proof of a general union of sentiment on this point; as it is believed that Amsterdam had scarcely an advocate out of Holland, and even there its pretensions were advocated on the ground of treaties, and not of natural right. (The commissioners would do well to examine thoroughly what was written on this occasion.) The commissioners will be able, perhaps, to find, either in the practice or the pretensions of Spain, as to the Douro, Tagus, and Guadiana, some acknowledgments of this principle on the part of that nation. This sentiment, of right, in favour of the upper inhabitants, must become stronger in the proportion which their extent of country bears to the lower. The United States hold 600,000 square miles of inhabitable territory on the Mississippi and its branches, and this river and its branches afford many thousands of miles of navigable waters penetrating this territory in all its parts. The inhabitable grounds of Spain below our boundary and bordering on the river, which alone can pretend any fear of being incommoded by our use of the river, are not the thousandth part of that extent. This vast portion of territory of the United States has no other outlet for its productions, and these productions are of the bulkiest kind. And in truth their passage down the river may not only be innocent, as to the Spanish subjects on the river, but cannot fail to enrich them far beyond their present condition. The real interests then of all the inhabitants, upper and lower, concur in fact with their rights.

"If we appeal to the law of nature and nations, as expressed by writers on the subject, it is agreed by them, that were the river, where it passes between Florida and Louisiana, the exclusive right of Spain, still an innocent passage along it is a natural right in those, inhabiting its borders above. It would indeed be what those wri-

ters call an imperfect right, because the modification of its exercise depends in a considerable degree on the conveniency of the nation through which they are to pass. But it is still a right as real as any other right, however well defined; and were it to be refused, or to be so shackled by regulations not necessary for the peace or safety of its inhabitants, as to render its use impracticable to us, it would then be an injury, of which we should be entitled to demand redress. The right of the upper inhabitants to use this navigation is the counterpart to that of those possessing the shores below, and founded in the same natural relations with the soil and water. And the line at which their rights meet is to be advanced or withdrawn, so as to equalize the inconveniences resulting to each party from the exercise of the right by the other. This estimate is to be fairly made with a mutual disposition to make equal sacrifices, and the numbers on each side are to have their due weight in the estimate. Spain holds so very small a tract of habitable land on either side below our boundary that it may in fact be considered as a strait in the sea; for though it is 80 leagues from our boundary to the mouth of the river, yet it is only here and there in spots and slips that the land rises above the level of the water in times of inundation. There are then and ever must be so few inhabitants on her part of the river that the freest use of its navigation may be admitted to us without their annoyance. For authorities on this subject, see Grot. L. 2. c. 2. § 11, 12, 13, c. 3. § 7, 8, 12. Puffendorf, L. 3. c. 3. § 3, 4, 5, 6. Wolff's Inst. § 310, 311, 312. Vattel, L. 1. § 292. L. 2. § 123 to 139.

"It is essential to the interests of both parties that the navigation of the river be free to both, on the footing on which it was defined by the treaty of Paris, viz. through its whole breadth. The channel of the Mississippi is remarkably winding, crossing and re-crossing perpetually from one side to the other of the general bed of the river. Within the elbows thus made by the channel there is generally an eddy setting upwards, and it is by taking advantage of these eddies, and constantly crossing from one to another of them, that boats are enabled to ascend the river. Without this right the whole river would be impracticable both to the Americans and Spaniards.

"It is a principle that the right to a thing gives a right to the means without which it could not be used, that is to say, that the

means follow the end. Thus a right to navigate a river draws to it a right to moor vessels to its shores, to land on them in cases of distress, or for other necessary purposes."\*

The government had been engaged in its Spanish negotiation for twelve years. Some of the nations of Europe, such as Austria, had refused to receive and acknowledge our ministers, and although this might be matter of regret, it could not be of complaint. But Spain, early in the revolution embarked as an associate against the common enemy, had in other respects manifested a conduct, far, indeed, from being friendly. During hostilities, America, contending for her independence with very feeble means, had not rendered that country any essential services; and, instead of being able to confer obligations, sought assistance from foreign states. Spain entered into the contest, not certainly in consequence of any contract or convention with the United States; but stimulated, probably, by the prospect of aggrandizement in her American colonies.

Mr. Short, having arrived in Madrid, the commissioners were regularly received and accredited in the beginning of February '93. The negotiation was conducted with Don Diego Gardoqui, formerly a chargé in America. We shall insert in this place the instructions prepared in 1790 for Mr. Carmichael, respecting the Mississippi. They are reduced to an abridged form, and develop many important political movements and considerations of those times.

*Heads of consideration on the navigation of the Mississippi.*

"We have a right to the navigation of the Mississippi—1, by nature,  
 \_\_\_\_\_ 2, by treaty.

It is necessary to us.

More than half the territory of the U. S. is on the waters of that river. 200,000 of our citizens are settled on them—of whom

\* On the subject of the navigation of rivers, we refer the reader to the articles of the Congress of Vienna of 1815, respecting the navigation of the Rhine, the Neckar, the Main, the Moselle, the Meuse and the Scheld, particularly, State Paper No. 16.—"Regulations for the Free Navigation of Rivers." (Schoell, *Recueil des Pièces Officielles*, &c. Tom. viii.)



40,000 bear arms. These have no other outlet for their tobacco, rice, corn, hemp, lumber, house timber, ship timber.

We have hitherto respected the indecision of Spain, because we wish peace : because our western citizens have had vent at home for their productions.

A surplus of production begins now to demand foreign markets.

Whenever they shall say, "we cannot, we will not be longer shut up," the U. S. will be reduced to the following dilemma—

1. to force them to acquiescence,
2. to separate from them, rather than take part in a war against Spain,
3. or to preserve them in our union by joining them in the war.

The 1st is neither in our principles, nor in our power.

2. A multitude of reasons decide against the 2d—it may suffice to speak out one : were we to give up half our territory rather than engage in a just war to preserve it, we should not keep the other half long—

3. The 3d is the alternative we must necessarily adopt.

How are we to obtain that navigation ?

#### A. *By Force.*

- I. *Acting separately.*

That we can effect this with certainty and promptitude, circumstances decide.

Objection—We cannot retain New Orleans, for instance, were we to take it.

Answer—A moderate force may be so secured as to hold out till succoured,—

our succours can be prompt and effectual,—

suppose after taking it we withdraw our force.

If Spain takes it by an expedition, we can recover it by a counter expedition,—

and so, as often as the case shall happen.

Their expeditions will be slow, expensive, and lead to catastrophe ;—

Ours sudden, economical, and a check have no consequences.

We should associate the country to our union,—  
the inhabitants wish this,—

they are not disposed to be of the Spanish government.

It is idle in Spain to suppose our western inhabitants will unite with them—they could be quiet but a short time under a government so repugnant to their feelings—were they to come under it for present purposes it would be with a view to throw it off soon—should they remain they would communicate a spirit of independence to those, with whom they should be mixed.

II. *Acting in conjunction with Great Britain and with a view to partition.—The Floridas and Island of New Orleans would be assigned to us.*

Louisiana (or all the western waters of the Mississippi) to them—we confess that such an alliance is not what we would wish—because it may eventually lead us into embarrassing situations with our best friend—and put the power of two neighbours into the hands of one.

Lord Lansdowne has declared, he gave the Floridas to Spain rather than the U. S., as a bone of discord with the house of Bourbon, and of reunion with Great Britain.

Connolly's attempt (as well as other facts) proves they keep it in view.

### B. *By negotiation.*

I. *What must Spain do of necessity?*

The conduct of Spain has proved that the occlusion of the Mississippi is system with her.

If she open it now, it will be, because forced by imperious circumstances.

She will consequently shut it again when these circumstances cease.

Treaty will be no obstacle—

Irregularities, real or pretended in our navigators, will furnish colour enough.

Perpetual broils, and finally war will ensue.

Prudence and even necessity impose on us the law of settling the matter now *finally*, and not by halves.

With experience of the past and prospect of the future, it would be imbecility in us to accept the naked navigation.

With that we must have what is necessary—

1. to its use, and without which it would be useless,—
2. to secure its continuance.

That is a port near the mouth to receive our vessels and protect the navigation—so well separated in jurisdiction and fact as to avoid the danger of broils.

But even this will not secure the Floridas and Louisiana against Great Britain—

If we are neutral she will wrest those possessions from Spain,—the inhabitants (French, English, Scotch, American) would prefer England to Spain.

## II. What then had Spain better do of choice ?

Cede to us all territory on our side the Mississippi on condition that we guaranty all her possessions on the western waters of that river.

She agreeing further, to subsidize us, if the guaranty brings us into the war.

Should Great Britain possess herself of the Floridas and Louisiana, her governing principles are conquest, colonization, commerce, monopoly—

She will establish powerful colonies in them ;—these can be poured into the gulph of Mexico for any sudden enterprize there,—

or invade Mexico, their next neighbour, by land,—whilst a fleet cooperates along shore and cuts off relief,—and proceed successively from colony to colony.

With respect to us, if Great Britain establishes herself on our whole land board,—

our lot will be bloody and eternal war,—or indissoluble confederacy.

Which ought we to choose ?

What will be the lot of the Spanish colonies in the jaws of such a confederacy ?

What will secure the ocean against monopoly ?

Safer for Spain that we should be her neighbour than England. Conquest not in our principles,—inconsistent with our government,—

*not our interest to cross the Mississippi for ages,—*

and will never be our interest to remain united with those who do.

Intermediate chances save the trouble of calculating so far forward.

Consequences of this cession and guaranty.

1. Every subject of difference will be removed from between Spain and the United States—
2. Our interest will be strongly engaged in her retaining her American possessions.
3. Spain will be quieted as to Louisiana, and her territories west of that.
4. She may employ her whole force in defence of her islands and southern possessions.
5. If we preserve our neutrality, it will be a very partial one to her.
6. If we are forced into the war, it will be as we wish on the side of the house of Bourbon.
7. Our privateers will commit formidable depredations on the British trade and occupy much of their force—
8. By withholding supplies of provision as well as concurring in expeditions, the British Islands will be in imminent danger.
9. Their expenses of precaution both for their continental and insular possessions will be so augmented as to give a hope of running their credit down—

In fine for a narrow slip of barren, detached and expensive country, Spain secures the rest of her territory and makes an ally where she might have a dangerous enemy."

But it was soon ascertained, that Spain was not at that time disposed to admit the limits, or the navigation of the Mississippi. Circumstances were quite unfavourable for the success of this undertaking. The threatened rupture between England and that country, on account of the seizure of the English settlement in Nootka sound by Martinez in 1789, had been prevented by the convention of the Escorial of the following year; and in 1793 the National Convention declared war against Spain; a measure, which at the moment appeared an act of desperation; in any view, an unnecessary proceeding, for Spain had given France no other cause for it than an application to the convention in behalf of Louis XVI. Soon after this event, Spain joined the

league against France by a treaty signed at Madrid, in May '93, with Lord St. Helens. And in the course of the year, all the European powers, with the exception of Sweden, Denmark, the grand duchy of Tuscany, Swisserland, and the republics of Genoa and Venice, became parties to this coalition. France appeared in the act of being crushed ; and Spain, having the support of England, and being a principal member of an alliance, well considered irresistible, felt herself better able to maintain her unjust pretensions in North America. Some considerations, personal to the Spanish minister, also, presented obstacles to the termination of the negotiation. M. Gardoqui, who had resided in the United States during the confederation, and had been an eye witness of the weakness of that government, of its feeble and uncertain control and action over the states, of the apparent discord and divisions that existed in the country, more especially on the Spanish subject, of the tardy and ineffectual manner in which the provisions of treaties had been enforced, of the unsatisfactory authority, with which it was invested in relation to foreign powers, naturally imbibed an impression, that a government, composed of parts, so disjointed and jealous, could neither be strong nor permanent. The minister frankly said, he did not believe, that the northern, middle and southern states could be brought to act in concert against a foreign enemy, nor could their efforts ever cause much apprehension, as the government had no navy. This conviction added to the reluctance, expressed by the court of Spain, to enter into a treaty with us. The old court of France, also, opposed formerly the claims of the Americans in this quarter, an opposition, the effects of which were still felt at Madrid. We discover proofs of this fact in a letter from the French minister at Aranjuez to M. de Vergennes, made public, when the bureaux of the ministers of Louis XVI. were seized upon by the constituent assembly :

“ The cabinet of Madrid thinks it has the greatest interest not to open the Mississippi to the Americans, and to disgust them from making establishments on that river, as they would not delay to possess themselves of the commerce of New-Orleans and Mexico,

whatever impediments should be opposed to their progress, and that they would become neighbours the more dangerous for Spain, as, even in their present weakness, they conceive vast projects for the conquest of the western shore of the Mississippi. Montmorin adds, "that Spain is decided to make the savages a barrier between her possessions and those of the Americans, that it would oppose, if necessary, other obstacles to their progress, and that his christian majesty could not give to his catholic majesty a greater proof of his attachment, than in employing his influence in the United States to divert their views from the navigation of the Mississippi."

The instructions of the commissioners, in relation to the boundary and the navigation, were in the nature of a *sine qua non*. But they believed it was not for the advantage of the United States to break off the negotiation at once, though no doubt could remain of the impossibility of obtaining those conditions at that moment.

We shall here interrupt this narrative to relate a few circumstances, that properly belong to the diplomatic history of Spain, though not immediately connected with this particular negotiation. The Indians on our southern borders were the causes of the same misunderstanding with the Spaniards, as those of the northern portion had been with the English. These aborigines, native, independent nations, inhabited a territory they actually owned; not acquainted with the rules, that direct the intercourse of civilized people, they did not possess accurate notions on the subject and propriety of neutrality; their modes of life were such, that if they committed acts of hostility, it was not easy to detect them, and their friendship being easily purchased, it was still more difficult to trace the foreign influence, to which they were subject. Their territory was, also, infested by numbers of white men, whom vices or a restless disposition led from their own country, and whose artifices and control over the Indians were often attended with pernicious consequences. The United States, in their diplomatic relations with Spain and Great Britain, have suffered an unusual share of inconvenience and mischief from the existence of these tribes on their frontiers, equally unavoidable with the wrongs and out-

rages to which the natives themselves have been necessarily exposed—circumstances of grievance and oppression, it seems the order of nature, however difficult to comprehend or much to be deplored, that barbarous nations should always encounter when brought into contact with civilized ones. The Creeks, Chickasaws, Choctaws, Cherokees, and other warlike races had their residence on the frontiers of Georgia and the Spanish possessions. These tribes, powerful and numerous, well supplied with arms and ammunition, committed various acts of aggression on our borders, and they probably did not spare the Spanish. Some of them had been engaged with Great Britain in the revolution war against us, others were, at this time, connected with Spain by treaties of friendship and alliance, and others again were on the same footing with the United States. These various circumstances, and the situation and leagues of the different tribes readily led to irritation, often to murders, and desolations. It is not necessary to give a detailed account of the remonstrances and complaints of the Spanish commissioners in relation to unprovoked Indian hostility, and the criminal interference of the United States. But they all appear to have been unfounded ;—they arose from misapprehension on the part of Spain ;—the frontiers of that nation had unquestionably suffered from the acts of the Indians. Smarting from the incursions of these marauders, and provoked with the United States for resisting their pretensions in the west, the Spaniards, naturally enough, attributed to the American government those aggressions, which, in truth, were caused by the peculiar condition and circumstances of the Indian tribes.

It is, however, certain that, after war was declared by France in March '93, hostile armaments were organized in Kentucky against the dominions of Spain on the Mississippi, not only by foreigners, but also by American citizens. We have already alluded to the great degree of uneasiness that existed in the western country on the subject of the navigation of that river. Information was given to the department of state, that four foreigners left Philadelphia for Kentucky in the month of October, furnished with authority from the



French minister to engage and enlist men, whether citizens or not, on any part of their route, to undertake an expedition against the Spanish settlements, of which the ultimate object was the conquest of New Orleans. They were also supplied with money and blank military commissions. It was clearly proved that a number of American citizens had received commissions, that preparations of provisions and ammunitions were made, and that a military force was organized within the limits of the United States, and about to set out on a military expedition against the dominions of Spain. This business had a serious aspect. President Washington observed, in a message to Congress, the scheme "sets public order at defiance, and places the peace of the United States in the discretion of unauthorized individuals." A proclamation was issued without delay, forbidding the enterprize, and the necessary orders sent to the United States officers on the points threatened. A correspondence also took place between Mr. Jefferson and the governor of Kentucky on the subject. The governor was officially informed of these hostile proceedings, and his assistance requested in maintaining the laws of the country and of nations. A wrong impression appears to have been entertained there, at that time, respecting the powers of the general government, the more remarkable, as, in the painful controversy with M. Genet, the executive had repeatedly and very recently exercised the power vested in it by the constitution and by statute, (act of May 2, 1792,) of requiring the aid of the governors of states in cases precisely similar to those, which occurred in Kentucky. The governor intimated a doubt, whether he had a right to restrain men from leaving the state with arms and ammunition; we shall presently quote his own words. This was the beginning of the Federal government; and, connected with the controversy with France, may well be called its crisis. These instances of reluctance in the states to comply with the requisitions of the national executive, not only show with remarkable distinctness the difficulties the government had to surmount at its first set-

ting out, but they illustrate, in an intelligible and practical way, the legitimate scope and action of the constitution :

" I have great doubts, even if they do attempt to carry their plan into execution, (provided they manage their business with prudence) whether there is any legal authority to restrain or punish them, at least, before they have actually accomplished it, for if it is lawful for one citizen of this state to leave it, it is equally so for any number of them to do it. It is, also, lawful for them to carry with them any quantity of provisions, arms and ammunition, and, if this act is lawful in itself, there is nothing but the particular intention with which it is done, that can possibly make it unlawful."

The following extracts from a letter of the Secretary of State, comprise the whole of the argument in defence of the constitutional exercise of power required by the executive :

" That foreigners should meddle in the affairs of a government where they happen to be, has scarcely ever been tolerated, and is often very severely punished. That foreigners should point the force of a nation against its will, to objects of hostility, is an invasion of its dignity, its tranquillity, and even safety. Upon no principle can the individuals on whom such guilt shall be fixed, bid the government to wait until their numbers shall defy the ordinary animadversions of law, and until they are incapable of being subdued by the force of arms."—" Nor is this offence of foreigners ex-  
piated or lessened by an appeal to a presumed right in the citizens of Kentucky to enlist under such banners without the approbation of their country. In a government instituted for the happiness of the whole, with a clear delineation of the channels in which the authority derived from them, must flow, can a part only of the citizens wrest the sword from the hands of those magistrates, whom the whole have invested with the direction of military power? They may, it is true, leave their country, they may take arms and provisions with them, but if these acts be done not on the ground of mere personal liberty, but of being retained in a foreign service for purposes of enmity against another people, satisfaction will be demanded, and the state, to which they belong, cannot connive at their conduct without hazarding a rupture."—" The laws have rendered it lawful for the President, in case of invasion, to call forth the militia, or to issue his orders for that purpose to such of-

ficer of the militia as he shall think proper. They have empowered him to call forth the militia of one state for the suppression of an insurrection in another, under certain circumstances, and to subdue by the militia any combinations against the laws which may be too powerful for ordinary judicial proceedings.\*

The American commissioners, at the court of Madrid, having found in the state of public affairs in Europe insuperable difficulties to the successful termination of their mission, Mr. Carmichael returned to the United States, leaving Mr. Short as minister resident.\*

In the spring of '95, a great change became apparent in the situation and feelings of that court. Spain had been unsuccessful in the war with France, and the alliance with England was unpopular. A fatal disagreement arose in the Mediterranean between the English Admiral Lord Hood and the Spanish Admiral Langara, and the French armies of the Western Pyrenees, having taken Roses, Pampeluna, and gained other advantages, were advancing rapidly on the line of the Ebro. The Spanish government, having neither men nor money left, suddenly extricated itself from the dangers, with which it was then enveloped, by a peace concluded, July 1795, at Basle. This treaty, extremely popular at Madrid, was negotiated under the auspices of Manuel Godoy, at that time Duke of Aleudia, become since every where famous by the name of Prince of Peace, a title conferred on him as a compliment to his successful efforts on that occasion.† Spain escaped a political revolution, and the over-

\* During the first administration under the constitution, Spain was represented in this country by Messrs. Jaudenes and Viar, in the capacity of commissioners or ministers resident.

† The royal order, by which this title was granted to Manuel Godoy, is of so singular a character that we venture to present an extract of it to the reader:—"It is my desire," says Charles IV., "that besides his usual arms, and other emblems of dignity, he shall bear, in his quality of Prince of Peace, above the ducal coronet, a Janus, or head, with two faces, as a testimony of the wonderful prudence he has shown on the occasion of this peace; for, in reality, the prudent man should be provided with two faces, both to observe the past and the future," &c.

throw of the younger branch of the Bourbons on its throne, with which it was then menaced by the French armies. But by this treaty the Court of Aranjuez recognised the authority of that government, which had demolished its elder branch in France, and did little more than delay its own annihilation. Though the peace of Basle was forced upon Spain, a foreign writer has well observed, that the best commentary upon it is to be found in an expression of the proclamation of Joseph Bonaparte, issued at Cordova in 1810:—  
“When an extraordinary revolution expelled from the throne in France the reigning family, the Spanish branch should either not have laid down its arms till it had been reestablished, or *should expect itself some day or other to be driven from the throne of Spain.*”

The exhausted state of Spain, the ill success of the coalition of '93 against France, from which she was, however, released by the treaty of Basle, though not without suffering her full share of damage, and the rapidly decaying condition of her marine and commerce presented a favourable opportunity for renewing the negotiations respecting the Mississippi. The reputation his first diplomatic achievement had given the Prince of Peace, made him ambitious to seek more distinction in the same career. His court, threatened with a war by the United States, and exceedingly alarmed by the determined disposition of the inhabitants of the Western States, particularly of Kentucky, (whose celebrated resolutions at Lexington in the year '94, have now passed down the smooth, quiet stream of oblivion, together with so many other political acts in this country, which, at the time, seemed to forbode nothing less than the dissolution of the union) could expect to derive little benefit from a continued delay and evasion.—In the coalition of 1793, Spain gave the first indication of that decline and decrepitude, of which we have since witnessed the miserable consummation. Until this period, that celebrated people had retained in Europe a large portion of the influence, their ancient and well earned renown most legitimately conferred on them. With the old governments of the continent Spain had easily kept an equal

pace ; but when circumstances brought her to a grapple with France, then fresh, youthful and aspiring, or with the firm, vigorous, and well matured government of Great Britain, it was soon perceived that her glory and strength existed only in tradition. The Spanish court, undoubtedly, impressed with a sense of its own weakness, with the paltry of its institutions, looked round for the safest and least exposed path in which it could best retire from the contest. Her geographical situation fortunately permitted her to be for several years a spectator of the perilous events of those times, for it was quite evident that until a political regeneration took place among her people, war would bring her nothing but disgrace, disaster and impoverishment. But the treaty of Basle placed Spain in a situation certainly new as it regarded England ; a power, on account of its navy and colonial possessions, capable of doing Spain a great deal more mischief than France. This circumstance, probably, had some influence in the final negotiation respecting the Mississippi.

Thomas Pinkney, of South Carolina, having been nominated the preceding November envoy extraordinary, arrived in Madrid in '95, before the conclusion of the peace with France.\* He was sent from London as a special minister, with instructions to propose a settlement. Spain finally made a sacrifice of the limits and the Mississippi, but it was done with the utmost reluctance ; and it was not till October that the treaty was signed.† So much delay was again re-

\* This mission was successively offered to Patrick Henry and Thomas Jefferson.

† This is a treaty of friendship, limits and navigation. It contains no stipulations respecting commerce, as it relates to the intercourse of the two nations ; it defines the right of search, but not that of blockade, and contains the usual stipulation on the head of trade with an enemy's ports :

"ART. 2. The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the river Mississippi, at the northernmost part of the thirty-first degree of latitude north of the

sorted to, that Mr. Pinkney demanded his passports to return to England. This treaty, usually called the treaty of San Lorenzo el Real, was properly a convention only of limits

equator, which from thence shall be drawn due east to the middle of the river Apalachicola, or Catahouche; thence along the middle thereof to its junction with the Flint; thence strait to the head of St. Mary's river, and thence down the middle thereof to the Atlantic ocean. And it is agreed, that if there should be any troops, garrisons, or settlements of either party, in the territory of the other, according to the above mentioned boundaries, they shall be withdrawn from the said territory within the term of six months after the ratification of this treaty, or sooner if it be possible; and that they shall be permitted to take with them all the goods and effects which they possess.

"ART. 3. Each party to furnish a commissioner and surveyor, to meet at Natchez, within six months after ratification, to run the boundary line, to make plans, keep journals, &c. which are to be considered as part of this convention.

"ART. 4. It is likewise agreed, that the western boundary of the United States, which separates them from the Spanish colony of Louisiana, is in the middle of the channel, or bed of the river Mississippi, from the northern boundary of the said states, to the completion of the thirty-first degree of latitude north of the equator. And his Catholic Majesty has likewise agreed, that the navigation of the said river, in its whole breadth, from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention.

"ART. 5. No treaties, except treaties of peace, to be made by one party with the Indians, living within the boundary of the other.

"ART. 6. Each party to protect the vessels of the other within its jurisdiction, by sea or land; and to restore vessels and effects by whomsoever taken.

"ART. 7. Citizens and subjects, vessels and effects, not liable to embargo, or detention, for any military expedition, &c. by either party.

"ART. 8. Vessels of either party, forced by stress of weather, &c. into the ports, &c. of the other, to be received with kindness, allowed to refresh, and freely to depart.

"ART. 9. Property taken from pirates to be restored to the true owner, on proof.

"ART. 10. In cases of wrecks, &c. each party to afford the other the same assistance it would give to its own citizens or subjects under similar circumstances, &c.

and navigation ; for it did not contain a commercial regulation. The boundaries both to the south and the west were fixed agreeably to the demands of the United States ; they

" ART. 11. Right of devise, donation, and of inheritance, with respect to personal goods, secured to the citizens or subjects of each party, in the dominions of the other, &c.

" ART. 12. Merchant ships of one party, making for a port of an enemy of the other, obliged to exhibit passports and certificates, &c.

" ART. 13. In case of war between the parties, one year, after proclamation of it, allowed to citizens and subjects, respectively, to settle their affairs, &c.

" ART. 14. No subject of Spain to take a commission from a third power with whom the United States are at war, to cruise against the citizens, &c. of the latter : Nor any American citizen to take a commission from a power with which Spain is at war, to cruise against the persons and property of Spaniards.

" ART. 15. Free trade allowed with an enemy : And from one enemy port to another enemy port, either directly or indirectly. Free ships to make free goods : Contraband goods excepted. Free ships to protect persons, unless they are soldiers in the actual service of an enemy.

" ART. 16. This liberty of navigation and commerce shall extend to all kinds of merchandises, excepting those only which are distinguished by the name of contraband ; and under this name of contraband, or prohibited goods, shall be comprehended, arms, great guns, bombs with the fusees, and the other things belonging to them, cannon ball, gunpowder, match, pikes, swords, lances, spears, halberds, mortars, petards, grenades, saltpetre, muskets, musket ball, bucklers, helmets, breast plates, coats of mail, and the like kinds of arms, proper for arming soldiers ; musket rests, belts, horses with their furniture, and all other warlike instruments whatever. These merchandises which follow, shall not be reckoned among contraband or prohibited goods ; that is to say : all sorts of cloths, and all other manufactures woven of any wool, flax, silk, cotton, or any other materials whatever ; all kinds of wearing apparel, together with all species whereof they are used to be made ; gold and silver, as well coined as uncoined ; tin, iron, latten, copper, brass, coals ; as also wheat, barley and oats, and any other kind of corn and pulse ; tobacco, and likewise all manner of spices, salted and smoked flesh, salted fish, cheese and butter, beer, oils, wines, sugars and all sorts of salts : and, in general, all provisions, which serve for the sustenance of life : furthermore, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail cloths, anchors,



will be found in the 2d and 4th articles. The whole breadth of the Mississippi was ceded, during the term of the treaty, for navigation, though his catholic majesty was authorized to

and any parts of anchors, also ships' masts, planks, and wood of all kind, and all other things proper either for building or repairing ships, and all other goods whatever, which have not been worked into the form of any instrument prepared for war, by land or by sea, shall not be reputed contraband; much less, such as have been already wrought and made up for any other use; all which shall be wholly reckoned among free goods: as likewise, all other merchandises and things, which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods: so that they may be transported and carried in the freest manner by the subjects of both parties, even to places belonging to an enemy, such towns or places being only excepted, as are at that time besieged, blocked up, or invested. And, except the cases in which any ship of war, or squadron, shall, in consequence of storms or other accidents at sea, be under the necessity of taking the cargo of any trading vessel or vessels, in which case they may stop the said vessel or vessels, and furnish themselves with necessaries, giving a receipt, in order that the power to whom the said ship of war belongs, may pay for the articles so taken, according to the price thereof, at the port to which they may appear to have been destined by the ship's papers: and the two contracting parties engage, that the vessels shall not be detained longer than may be absolutely necessary for their said ships to supply themselves with necessaries. That they will immediately pay the value of the receipts, and indemnify the proprietor for all losses which he may have sustained in consequence of such transaction.

"ART. 17. One of the parties being engaged in war, the vessels of the other must be furnished with sea letters or passports, &c.

"ART. 18. Vessels of war of either party, visiting merchantmen of the other, under the right of search, to remain out of cannon shot, and board, in a boat, with two or three men only.

"ART. 19. Each party permitted to establish consuls in the ports of the other, &c.

"ART. 20. It is also agreed, that the inhabitants of the territories of each party shall respectively have free access to the courts of justice of the other, and they shall be permitted to prosecute suits for the recovery of their properties, the payment of their debts, and for obtaining satisfaction for the damages which they may have sustained, whether the persons whom they may sue be subjects or citizens of the country in which they may be found, or any other persons whatsoever,

cede, by a special convention, the same to any other nation. A right of deposit for goods at New Orleans, on condition of paying a reasonable price for storage, was obtained, and a

who may have taken refuge therein; and the proceedings and sentences of the said courts shall be the same as if the contending parties had been subjects or citizens of the said country.

"ART. 21. In order to terminate all differences on account of the losses sustained by the citizens of the United States, in consequence of their vessels and cargoes having been taken by the subjects of his Catholic Majesty, during the late war between Spain and France, it is agreed, that all such cases shall be referred to the final decision of commissioners, to be appointed in the following manner: His Catholic Majesty shall name one commissioner, and the President of the United States, by and with the advice and consent of their Senate, shall appoint another, and the said two commissioners shall agree on the choice of a third, or if they cannot agree so, they shall each propose one person, and of the two names so proposed, one shall be drawn by lot in the presence of the two original commissioners; and the person whose name shall be so drawn, shall be the third commissioner: and the three commissioners so appointed, shall be sworn *impartially to examine and decide the claims in question, according to the merits of the several cases, and to justice, equity, and the laws of nations.* The said commissioners shall meet and sit at Philadelphia: and in the case of the death, sickness, or necessary absence of any such commissioner, his place shall be supplied in the same manner as he was first appointed, and the new commissioner shall take the same oaths, and do the same duties. They shall receive all complaints and applications authorized by this article, during eighteen months from the day on which they shall assemble. They shall have power to examine all such persons as come before them, on oath or affirmation, touching the complaints in question, and also to receive in evidence all written testimony, authenticated in such manner as they shall think proper to require or admit. The award of the said commissioners, or any two of them, shall be final and conclusive, both as to the justice of the claim and the amount of the sum to be paid to the claimants; and his Catholic Majesty undertakes to cause the same to be paid in specie, without deduction, at such times and places, and under such conditions, as shall be awarded by the said commissioners.

"ART. 22. And, in consequence of the stipulations contained in the fourth article, his Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their

condition that if the same right was not renewed, another place of deposit should be granted. The principle, that the flag covered the merchandise was also recognised, and contrabands were remarkably curtailed. The firmness and perseverance of the government in refusing to conclude a treaty without a recognition of the limits and navigation, were well rewarded in the end. While the mouth of the Mississippi remained closed, the fertile territories of the western waters were substantially withheld from all the benefits of a market, the population checked, the price of land kept down, and the people themselves, were not only in some degree beyond the just control and influence of the national government, but it could not be expected, they should feel the same degree of attachment to the union as the inhabitants of the Atlantic states, who were enjoying all possible prosperity under the protection of its laws.

Every step of the negotiations with Spain has been marked by delays and difficulties. It was fifteen years before that country would consent to consign in a treaty the legitimate limits of the United States, and yet, the only boundary, that could reasonably give rise to controversy, the southern boundary of Georgia, (for Great Britain ceded in '83 the Floridas to Spain without any specific limits, and to the United States her own claims to all territory north of the 31st degree of north latitude,) was a very slight obstacle to the termination of the negotiation. After all, this boundary was not drawn, nor the Spanish troops withdrawn till '98, three years after the signature and ratification of the treaty of San Lorenzo el Real. Under the provisions of the 3d article, Mr. Andrew Ellicot was appointed, on the part

merchandises and effects in the port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores; and his Majesty promises either to continue this permission, if he finds, during that time, that it is not prejudicial to the interests of Spain; or if he should not agree to continue it there, he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment." This treaty was signed the 27th day of October 1795.

of the United States, commissioner to run the southern boundary; he repaired to Natchez as soon as possible after the ratification. But the country was not evacuated, as we have said, for three years, though by the 2d article, all troops, garrisons, and settlements, were to be removed within the space of six months after that formal act. An equal delay took place in the running of the boundary line. This tardy execution of the treaty was justified under various pretences. The Spaniards having been at some expense in erecting new or repairing old fortifications, and it not being stipulated whether they should be demolished, or left standing, refused to deliver them in their actual state. But, it is a new idea in diplomacy, that to withdraw, means to demolish. When it is the intention of the parties that works should be destroyed or paid for, it is always so stipulated. When a country is ceded, it is ceded in statu quo, unless otherwise agreed. In this case, the Spanish troops were to evacuate, and were allowed to take their "goods and effects" with them. The same expression, as to withdrawing, occurs in the treaty between the United States and Great Britain;—the troops were withdrawn and the works left standing. In the same year ('83), Great Britain ceded the Floridas to Spain, and her troops evacuated the territory without demolishing the fortifications. No maxim in public law is of higher and more general authority, than that "it is not allowable to interpret what has no need of interpretation." The American government subsequently consented that the fortifications should be demolished. The Spaniards, also, refused to evacuate the Walnut Hills, a principal post on the eastern bank of the Mississippi, near the confluence of the Yazoo and that river, a degree and a half to the northward of the boundary line. They alleged, it was necessary to retain this post in order to protect Upper Louisiana against an English expedition from Canada; Spain having declared war against England in October '96. This expedition could not proceed without violating the territory of the United States, and every possible assurance was furnished, that no such enterprize had ever been contemplated. Even if this pretence was well founded, the Spaniards obvi-

ously had no right to retain territory or fortifications formerly ceded. The other pretexts were equally frivolous, and destitute of defence. We refer the reader, for the details of the transaction, to Mr. Ellicot's Journal, published in 1803.

A short time after this difficulty was overcome, and a detachment of American troops put peaceably in possession of the country, an alarming and distressing event took place at New Orleans. From the time of the ratification of the treaty, not only the navigation of the Mississippi had been fully enjoyed, but the right of deposite, under the 22d article, had been constantly used, and found highly beneficial. Spain was allowed, under the provisions of the treaty, to suspend this right at the expiration of three years, at the particular spot of New Orleans. But that period having passed, nay, the seventh year of the privilege being entered upon, no suggestion having been given, that it was prejudicial to the interest of Spain, on the contrary, the parties appearing to derive great advantages from it, there was no cause to apprehend, that the right would be revoked. The act of the intendant Morales, suspending the right of deposite, promulgated the 2d Oct. 1802, excited, therefore, as much surprise, as alarm and indignation. We shall insert the decree issued on this occasion; and it is necessary to remark, that these difficulties, though the act of the intendant was disowned by the Spanish government, were not entirely removed till the final transfer of Louisiana to the United States:

"As long as it was necessary to tolerate the commerce of neutrals, which is now abolished, it would have been prejudicial to the province, had the intendant, in compliance with his duty, prevented the deposite in this city of the property of the Americans, granted to them by the 22d article of the treaty of friendship, limits and navigation of the 27th October 1795, during the limited term of three years. When the publication of the ratification of the treaty of Amiens,\* and the reestablishment of the communica-

\* It is evident, that the pacification in Europe induced the intendant to revoke the deposite, in order that the trade might fall into the hands of the Spaniards; for, while the war continued, they could not conduct it.

tion between the English and Spanish subjects took place, that inconvenience has ceased. Considering that the 22d article of the said treaty takes from me the power of continuing the toleration, which necessity required, since, after the fulfilment of the said term, this ministry can no longer consent to it, without an express order of the king: Therefore, and without prejudice to the exportation of what has been admitted in proper time, I order, that from this date, the privilege, which the Americans had, of importing and depositing their merchandise and effects in this capital, shall be interdicted."

Under the head of France, we have given an account of the transfer of Louisiana to this country. That subject does not belong at all to this part of our history; as Louisiana, at the time of the cession, was the property and in the possession of France. Spain, however, was exceedingly opposed to this arrangement, and showed great reluctance to evacuate the territory. In the outset, a formal protest was made by that court against the transfer; but she was induced in the end to withdraw it, and to give her consent to the convention of April 1803, between France and the United States.\* We are not acquainted with the secret history of the treaty of St. Ildefonso, by which Louisiana was "retroceded to

\* The ground of the opposition of Spain to the transfer of Louisiana, separate from any secret articles that may have existed in the treaty, undoubtedly was, that France had not fulfilled on her part the conditions, in consideration of which the retrocession was made. It is not our purpose to enter into the intricacies of the negotiations of that period. It is sufficient to remark, that the secret treaty of St. Ildefonso of 1800, the treaty of Luneville of 1801, and of Madrid of the same year, created the modern kingdom of Etruria, for the benefit of the prince of Parma, who had married a daughter of Charles IV. of Spain, and who, according to the Spanish order, was the eventual successor to that throne. In consideration of this creation, Louisiana, the duchy of Parma and Placentia were transferred to France; and it is supposed, that the prince of Parma, become of Etruria, signed, soon after, a renunciation of the Spanish throne. In 1807, by the convention of Fontainebleau, Etruria was ceded to Napoleon Bonaparte, and the reigning family transferred to a government, styled Northern Lusitania, made out of the Portuguese provinces of Entre Duero y Minho.

France." The third article is the only one that is known, and that has been already quoted. But it has usually been said, that to the transfer was annexed a condition, either that France should not cede Louisiana to any other power, or if she should hereafter wish to alienate it, the preference should be given to Spain. There is little doubt, that there was some secret stipulation or other of that kind; for the very news of the transfer to the United States, awakened not only surprise, but even indignation in Spain. It is well known, that the Spanish government, at first, refused to acknowledge the validity of it; and did not, as it was, yield the whole province, without an angry and protracted discussion, which had nearly involved the two countries in a war. Indeed, taken in connexion with the suspension of the deposit at New Orleans, and the depredations on our commerce, a committee of the House of Representatives of Congress reported, in January 1806, that there was ample cause for a formal declaration of war against Spain.

The difficulties this country has had with Spain, respecting boundaries and territories, were, indeed, remarkable. We may attribute the circumstance in some degree to the ignorance generally existing respecting the countries in description; they had never been surveyed, and in the treaties with France, Spain and England, by which they had often changed owners, their limits were never accurately defined. In particular, the article of cession of Louisiana by France to this country, was most likely to lead to doubt and controversy, for the language was of an unusual description to employ in describing the bounds of a territory. The discussion respecting the portion of West Florida to the westward of the Perdido, began between the two governments at the time of the cession of Louisiana, in 1803, and was not concluded till 1810, when, the Bourbon family in Spain having been dethroned, the United States thought it imprudent longer to delay enforcing their right. Possession was accordingly taken of that territory by Governor Claiborne in that year, by order of the President.

The negotiation, concerning the eastern as well as west-



ern boundaries of Louisiana, was not only tedious and vexatious, but exceedingly intricate. Of the western limits, we shall speak hereafter; at present, we shall give a brief account of the eastern. The boundary of Louisiana, when in the hands of the French, before the treaty of 1763, extended on the east to the river Perdido. The country farther to the east of that, part of which has since been called West Florida, was then known by the general name of Florida. The celebrated treaty of peace and friendship between England, France and Spain, signed at Paris in the year just mentioned, changed the ownership of this territory. That treaty extinguished, apparently forever, the dominion of France in North America, for what she did not cede to Great Britain, she ceded to Spain, though in strict accuracy, western Louisiana, with the island of New Orleans, was transferred to Spain by a secret convention, signed at Paris in November '62, the day the preliminaries of the definitive treaty were signed. This was done by France to remunerate Spain for parting with Florida to England. The treaty of '63 made Great Britain mistress of all the North American continent to the east of the Mississippi, with the exception of the island of New Orleans. It is, also, important to bear in mind, that it changed the boundaries, as well as the ownership of Louisiana, separating the eastern portion from the great mass, and transferring it to England. That government immediately united that portion of Louisiana with Florida, formed two territories, separated by the river Apalachicola, and called them East and West Florida. The circumstance of this transfer, and the separation of the territory into two districts (for before the treaty of '63, neither East nor West Florida was known in geography), became the origin of the controversy between Spain and the United States, respecting the boundaries of Louisiana. The opposition of Spain was influenced by her unwillingness to abandon Louisiana, and by irritation at the President's proclamation of November 1804, erecting the territories and the waters of the Mobile into a collection district, declaring them to be within the boundaries of the United States, and establishing

a custom house there.—We have said,\* in another place, that the transfer of Louisiana to the United States, was made in 1803. It was described in the manner following; the words, we are under the necessity of repeating here, though quoted under the head of France, title Louisiana, are taken from the secret treaty of St. Ildefonso, of 1800. "His Catholic Majesty promises and engages on his part to *retrocede* to the French republic, the colony or province of Louisiana, with the same extent it now has in the hands of Spain, and that it had, when France possessed it, and such as it should be, after the treaties subsequently entered into between Spain and other states." This language is apparently ambiguous, and can only be understood by attending carefully to the history of the various cessions. As a justification for withholding the country between the Iberville and the lakes and the Perdido, Spain contended that France could only convey to the United States the rights she had acquired from Spain, and by the treaty of 1800 Spain *retroceded* to France what she (Spain) had received from France in '62, that is to say, a territory bounded on the east by the rivers Mississippi and Iberville, and the lakes Maurepas and Pontchartrain. But of the territory eastward of this line, called afterwards by the English West Florida, and ceded the same day by France to England, Spain never received the least portion. She never owned a square mile of this territory, either before or after the treaty of '63. Spain could, therefore, never give back or *retrocede* to France, a district, she had never owned. This word, *retrocede*, was interpreted by the Spanish minister with strictness. The treaty, itself, being called a treaty of *retrocession*, the whole movement and action of the instrument depended on that word; and it would be no compliment to the parties to that act to attribute to them the use of a vague, unmeaning term. The treaty of 1800 must, therefore, be considered entirely in reference to the word, *retrocession*. Spain, said D. Pedro

\* Chapter ix. Cession of Louisiana.

Cevallos,\* possesses Florida as Florida. She received that district from England in '83. "His Britannic majesty cedes and guaranties to his Catholic Majesty, eastern and western Florida." (art. 5th.) When France "*possessed*" it, therefore, and when she delivered it to Spain, it had the same extent as when in the "hands of Spain" at the time of the "retrocession." France made a complete cession to England. The territory, after '63, was in all respects English, but after '83 it became equally Spanish. These two acts are, in themselves, entirely distinct, and have no reference to any former boundaries of Louisiana. A new territory was erected in the hands of a new government, and called Florida. From that period we lose sight of the original eastern boundary of Louisiana. Two territories cannot be made to mean the same territory, nor can they be legally incorporated in the same instrument by the same name that are acquired at different times, by different names, and from different parties, unless a special reference is made to these circumstances. Spain received Louisiana from France in '63, and Florida from England in '83. The title of Spain to Florida is entirely independent of France. Another very great difficulty, in the opinion of Spain, presented itself in this view. Since '63, all the country south of the 32d degree of latitude and east of the Iberville, has been called Florida. But before the treaty of that year, the limits of the French possessions extended on the north from the Mississippi to the Ohio and Illinois rivers. It is, therefore, quite as correct to call that country about those rivers Louisiana, as it is the country about the Mobile. The style of East and West Florida has been recognised in a variety of public documents, more especially the treaties between Spain and England in '83, and Spain and the United States in '95. Part of the title of the governor of the Havana is, captain-general of "*the Floridas*." That country is also called, on

\* This is the same minister, that accompanied Ferdinand VII. to Bayonne in 1808. See Exposés of D. Juan Escoiquiz and D. Pedro Cevallos.

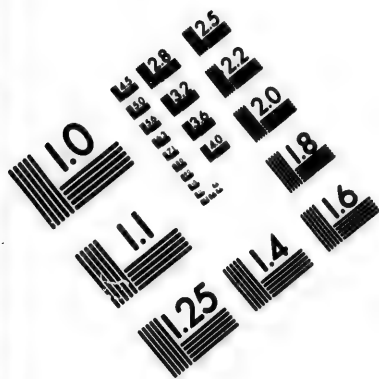
the maps, East and West Florida. It is therefore evident that this appellation, *West Florida*, was known, not only in diplomacy, but also in geography, and that when it was mentioned in any official public instruments, either treaties, commissions, or proclamations, it was always denominated *West Florida*, and *not Louisiana*, or any portion of Louisiana. If, therefore, in the treaty of 1800, it had been the intention of the parties to include this district, it would have been specifically named. No uncertainty need to have existed, because the boundaries were perfectly run, and the name every where known. If it had been the intention of the parties to include West Florida, they would have used the words *West Florida*, and not employed a phrase so exceedingly vague and ambiguous. If the United States were about to cede the state of Ohio, or Illinois, which at one time belonged to France, and then to England, and was then known by different names, she would not have gone back to the times, when France or England owned the country. She would simply have described the cession under the appellation of the state of Ohio, or Illinois. The simplest and most intelligible language is always employed on such occasions. It would have been absurd to have called it *Louisiana*, because it had once formed a part of that province.—With the same propriety we might call Ohio, *Louisiana*. It is, also, absurd to deliver the territory with the *same* and yet more extent,—same extent as when France possessed it in '63, and same extent that it *now* has in the hands of Spain,—if more, obviously, it is not the same. The phrase, "*when France possessed it*," not indicating a fixed time, for France possessed it under two very different conditions, should be determined by the clauses of the treaty; and not be so interpreted as to make those clauses inconsistent. If that expression refers to a period anterior to '63, it is quite evident, Spain could not comply with the provisions of the treaty, for a large part of Louisiana, as it was before the cession to England in '63, is now Kentucky, and other portions of the United States. It is not to be supposed, that the parties, having a full knowledge of the subject, should

have made a treaty, the provisions of which are at variance, and which one of the governments could not execute. It is certainly much more reasonable to construe the treaty in such a manner, as that one of the parties should have been able to comply with its provisions, and make the cession proposed. This interpretation Spain, one of the parties, puts on the treaty ;—the other party, France, confirms this interpretation. In August 1804, the minister of foreign relations, M. de Talleyrand, delivered the following opinion on the subject :

“ The eastern limits of Louisiana are indicated by the course of the Mississippi and the Iberville, the lakes Pontchartrain, and the Maurepas. It is at this line, that terminates the territory ceded by Spain to France. France had nothing to demand of Spain beyond this limit, and as she has now transferred to the United States the right she thus acquired, they cannot require of Spain a cession of territory more extensive.”

On the last clause of the cession, “ *such as it should be after the treaties subsequently entered into between Spain and other states,*” the Spanish government contended, that there were but two treaties to which this language could apply ; that of '83 between Spain and England, and of '95 between Spain and the United States. The treaty of '83 gave his Catholic Majesty the territory of West Florida. This territory, acquired by a different name, twenty years after the original cession of Louisiana, could, by no process whatever, be incorporated with the latter named province. It was an addition, generally, to the possessions of Spain, but it could never be considered a special one to the province of Louisiana. If the United States should cede Ohio to Spain, it would be an extravagant liberality of construction, to call it immediately part again of its original province. Louisiana itself was dismembered, it had been withdrawn from the government of its original proprietor, different portions of it had belonged to different states for a long period of time, had acquired new names, and had boundaries exactly defined. It is certainly the first example of the kind, that the







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simple act of a fresh cession should cause all these names and boundaries to disappear. The party, acquiring the possessions, may cause them to disappear, and incorporate the whole again into one territory. But Spain could not recognise a right of this description in a party to a second contract, in direct opposition to the opinion of the parties to the first original instrument, and to her very great cost and serious damage, where not a single direct stipulation could be produced to authorize a proceeding so violent. The treaty of '95, between Spain and the United States, principally related to the boundaries of Louisiana and Florida. So far, therefore, as it has any bearing on the subject, it excludes West Florida from the reach of the treaty of St. Ildefonso.

The reader will observe, that the entire success of the reasoning, by which Spain supported her pretensions to this territory, depends upon the single point, *what period is indicated by the possession of France*. That is, after all, the clause in the cession, that ought to determine the boundaries. The American government contended, that this period was one anterior to the year '63, for France divested herself of both portions of Louisiana on the same day. The east she ceded to England, and the west to Spain. When France, therefore, possessed Louisiana, it was an entire province. She never possessed it as Spain has since done. France could not cede an exact boundary to the United States, because that had not been agreed on in the treaty of St. Ildefonso. The treaties of '63, and '83, and '95, had changed exceedingly the limits of Louisiana; and the only legitimate mode of making an undisputed cession, was not to include, or exclude any territory specifically. In the transfer to America, the original article of the treaty of St. Ildefonso is employed; and, though that treaty is called a treaty of *retrocession*, the word is of no other importance, than as it expressed the act of the treaty better than any other term could do. Besides, France once possessed Louisiana, and a cession to her by any power of that territory would be a *retrocession*. The single general action of this instrument concerns that province. France was the first European state that owned it,

and it once held as much of the province as any other power has since held. Whatever, therefore, was ceded to France, whether a large or a small portion, must have been a *retrocession*. Still, this word is of little importance, because three distinct phrases, or specifications, are introduced to define the extent of the cession. We shall very briefly state the substance of the reasoning on these three points. 1st. "The colony or province of Louisiana, with the same extent it now has in the hands of Spain." This is a very easy matter to determine. We have, simply, to enquire what portion of Louisiana was in the hands of Spain when the treaty of St. Ildefonso was made. All Louisiana, to the eastward of the Mississippi, from the 31st degree of north latitude to the northern limits of the United States, had been ceded by France to Great Britain, by the treaty of '63, to which Spain was a party. It is the 7th article, and is in these words:—"His most Christian Majesty cedes and guaranties to his Britannic majesty the river and port of Mobile, and all the territory he possesses on the left bank of the Mississippi, with the exception of the city and island of New Orleans." (Martens.) This same territory, to the north of the 31st degree, was confirmed, (art. 2,) to the United States, by Great Britain, by the definitive treaty of peace and amity. Again, this territory was further confirmed to the United States, by the treaty of alliance of '78, (art. 6,) and by the 2d and 4th articles of the treaty of friendship, limits and navigation, of '95, between Spain and the United States. It is evident, therefore, that this specification does not touch a square mile, for not a square mile of it was in the hands of Spain in 1800. 2d. "The same extent that it had *when France possessed it*." This was in the year '63, or anterior to that period. That is to say, all France then possessed, and which had not been subsequently ceded to other powers, according to the exception of the first specification; otherwise, this clause would have included all that Spain had *ever* owned, which neither France nor Spain obviously could cede, for it belonged to a third power. A reference to its state, anterior to '63, ne-

cessarily excluded all subsequent modifications of the territory, in consequence of new names having been given to any part of it ; for a part of Louisiana remained in the hands of Spain, under a new denomination. Great Britain called that portion, ceded by the treaty of '63, West Florida, and Spain might have called some part adjoining Mexico by some other name. Therefore, to avoid embarrassment proceeding from a change of names, a period was taken when those names did not exist. It follows from this second clause or specification, that no part of the province then in the hands of Spain, ever possessed by France, should be excluded. 3d. "*Such as it should be after the treaties, subsequently entered into between Spain and other States.*" The treaty of '83, ceded West Florida to Spain. This, therefore, she did not acquire of France. But this portion falls within the first specification, because it is now in the hands of Spain, and within the second specification, because France once possessed it. If Spain, instead of receiving, had ceded West Florida, anterior to the treaty of St. Ildefonso, this third specification would have expressly excluded it. A treaty that enlarged the extent of the province could not diminish the extent of the cession. The treaty of '95 with the United States excluded whatever was to the north of the 31st degree and to the east of the Mississippi. That treaty, therefore, brought nothing within the reach of this 3d clause.

As the claim of the United States to this territory, in itself of great importance, was undoubted, we have given the course of argument in considerable detail ; and, though Spain never presented any satisfactory answer or explanation, she refused to deliver the country. The conduct of France, on this occasion, was unfriendly in the extreme. She openly adopted and defended the opinions of Spain ; and condemned the proceedings of the American government, in an unreserved and gratuitous manner. We extract a single passage from a letter of M. de Talleyrand, of December 1804 :

"This result his Imperial Majesty will learn with real interest.

He saw with pain the United States commence their differences with Spain in an unusual manner, and conduct themselves towards the Floridas by acts of violence, which, not being founded in right, could have no other effect but to injure its lawful owners. Such an aggression gave the more surprise to his majesty, because the United States seemed, in this measure, to avail themselves of their treaty with France, as an authority for their proceeding, and because he could scarcely reconcile with the just opinion which he entertains of the wisdom and fidelity of the federal government, a course of proceeding, which nothing can authorize towards a power, which has long occupied, and still occupies, one of the first ranks in Europe."

The United States had, therefore, the whole influence and authority of France against her in this business; for, from the treaty of Basle to the year 1808, Spain was the steady, faithful, and most useful ally of that power.

Although not entirely in course, we shall here conclude the account of the eastern boundary of Louisiana. The negotiations on the subject ceased in 1805; Spain prepared to defend the possession of it,—and, undoubtedly, an attempt to occupy it, on the part of the United States, would have led to a war. The territory was of great importance to the Americans, particularly on account of the waters of the Mobile, the principal rivers of Alabama emptying themselves into this bay, which is the natural outlet of an exceeding fertile country of great extent. Before the cession of Louisiana, the United States had attempted to buy the territory on the Mobile, of Spain. They claimed, also, for the citizens residing on the Tombigbee and Alabama rivers, its free navigation to the ocean, as a natural right, and as secured by the general principles of the laws of nations in similar cases. This privilege, however, was not obtained; for the Spanish authorities on the Mobile continued to levy, from time to time, a duty of 12½ per cent. on merchandise that passed through, for or from the upper country. We have already said, that, in 1804, a collection district, under the usual custom house laws, was established on the Mobile. The Spaniards complained of this act, as a violation of their territory

and sovereignty. But the American government attempted to exercise no further jurisdiction over the territory, till the year 1810, when the juncture of affairs in Europe made it extremely imprudent to suffer their right to West Florida to remain longer in suspense.

In the year 1807, after the treaty of Tilsit, the emperor Napoleon began the overthrow of the Bourbon dynasty in Spain, by attacking Portugal. The progress of this business is well known. At last, in 1810, Charles IV. and Ferdinand VII. being dethroned, the supreme junta of the Cortes driven to the isle of Leon and dissolved, and the English and Portuguese armies appearing to be besieged, as it were, in the celebrated lines of Torres Vedras, nearly at the extremity of the peninsula on the west, there was every reason to suppose, that the unprincipled project of the French emperor had succeeded; and that the ancient monarchy of Spain and the Indies, upon whose possessions, in the expressive language of an author of that country, the sun never set, was completely annihilated. The Spanish authorities in West Florida were, by this revolution, and by the treaties signed by Charles and Ferdinand, released from all obedience to the former Spanish government. West Florida, itself, was divided into two parties; one, under the influence of governor Folch, attached to the mother country; the other, said to be the most numerous, directed by colonel Kemper, was desirous of a union with the United States. The latter portion of the people held a convention at Baton Rouge, in the summer of 1810, and addressed a letter to the secretary of state, soliciting to be received under the protection of this country, and to have the privileges enjoyed, under the constitution, by other citizens of the confederacy. They published a proclamation at the same time, somewhat at variance with the claims of the American government on that territory. In Europe, France in full exercise of all the powers and prerogatives of the ancient Spanish throne, having originally opposed the claim of the United States to West Florida, would undoubtedly endeavour, as soon as possible, to get possession of it. In this hemisphere,

the Spanish colonies, with some exceptions, were, themselves, exceedingly agitated with a spirit of revolt, and several had declared themselves independent. A similar state of things appeared to exist in West Florida. The American government had already forbore, for a long time, to enter upon the enjoyment of its undoubted rights, in regard to this territory; but circumstances made it extremely dangerous longer to rely upon the success of this system. Orders were, therefore, sent to Wm. C. C. Claiborne, in the autumn of 1810, to take possession of the country, in the name of the United States, and to incorporate it, for the time, with the Orleans territory;—measures, that were effected without bloodshed. The motives of this step will be found in the proclamation, issued by the President on that occasion, though it is the first time the United States had been compelled to employ force to obtain possession of their own country. Those parts of the states of Alabama and Mississippi, that border on the gulf of Mexico, are composed of the ancient territory of West Florida.

This part of the account of the relations with Spain would be quite imperfect without an examination of the western boundary of Louisiana. Though this was finally settled at a later period than the one, now under consideration, it properly belongs to the act, constituting in 1803 a transfer of that province, more especially as the negotiations, respecting this boundary, were originally carried on at Madrid in 1804 and 5 by Messrs. Monroe and Pinkney, at the same time with that relating to the other frontier. This is not a subject susceptible of much discussion; for the right of the United States depends upon a few plain facts, perfectly substantiated, though the topic, like every other with the court of Spain, has led to a protracted and minute correspondence.

The Sieurs Joliet and Marquette from Canada, penetrated, as early as 1673, down the Mississippi to the Arkansas. Father Hennequin in 1680, La Salle and Tonti in 1682, descended to the ocean, and named the country Louisiana, placing it by the most solemn acts under the government of France, and by making settlements, and erecting works for



their protection. In 1685, La Salle landed with 240 persons in the bay St. Bernard from France, and built two forts there. Louis XIV., by letters patent in 1712, granted the commerce of the country to Anthony Crozat, defining its boundaries as all the land, coasts and islands, situated in the Gulf of Mexico, between Carolina on the east, and New and Old Mexico on the west, with all the streams that empty into the ocean within those limits, and the interior country dependent on the same. We mention these few detached facts, in an abridged form, to show that France first discovered Louisiana, and, according to the whole European practice, came into the rightful possession of it :

“The principles, which are applicable to the case, are such as are dictated by reason, and have been adopted in practice by European powers in the discoveries and acquisitions, which they have respectively made in the new world. They are few, simple, intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extent of sea coast, that possession is understood, as extending into the interior country, to the sources of the rivers, emptying within that coast, to all their branches, and the country they cover, and to give it a right in exclusion of all other nations to the same. It is evident that some rule or principle must govern the rights of European powers in regard to each other in all such cases, and it is certain, that none can be adopted in those, to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory so described, for the same society, to have connected its several parts together by the ties of a common interest and to have detached them from others. If this principle is departed from, it must be, by attaching to such discovery and possession, a more enlarged or contracted scope of acquisition, but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of an European power, who discovered and took possession of a new country, to the spot on which its troops or settlements rested, a doctrine, which has been totally disclaimed by all the powers, who made discoveries, and acquired possessions in America. The other extreme

would be equally improper, that is, that the nation who made such discovery, should, in all cases, be entitled to the whole of the territory so discovered. In the case of an island, whose extent was seen, which might be soon sailed round, and preserved by a few forts, it may apply with justice, but in that of a continent, it would be absolutely absurd. The great continent of America, North and South, was never claimed or held by any one European nation, nor was either great section of it. Their pretensions have been always bounded by more moderate and rational principles. The one laid down has obtained general assent. This principle was completely established in the controversy which produced the war of 1755. Great Britain contended that she had a right, founded on the discovery and possession of such territory, to define its boundaries by given latitudes in grants to individuals, retaining the sovereignty to herself, from sea to sea. This pretension, on her part, was opposed by France and Spain, and it was finally abandoned by Great Britain in the treaty of 1763, which established the Mississippi as the western boundary of her possessions. The second is, that whenever one European nation makes a discovery and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course. A third rule is, that whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other power, by virtue of purchases made by grants or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there by all the European powers. It is particularly illustrated by the stipulations of their most important treaties concerning those possessions, and the practice under them, viz.: the treaty of Utrecht in 1713, and that of Paris, 1763. In conformity with the 10th article of the first mentioned treaty, the boundary between Canada and Louisiana on the one side, and the Hudson Bay and North Western companies on the other, was established by commissaries by a line to commence at a cape or promontory on the ocean in fifty-eight degrees, thirty minutes north latitude, to run thence southwestwardly to latitude forty-nine de-

gress north from the equator, and along that line indefinitely westward. Since that time no attempt has been made to extend the limits of Louisiana, or Canada, to the north of that line, or of those companies to the south of it, by purchase, conquest, or grants from the Indians. By the treaty of Paris, 1763, the boundary between the present United States and Florida, and Louisiana, was established by a line to run through the middle of the Mississippi, from its source to the river Iberville, and through that river, &c. to the ocean. Since that time no attempts have been made by those states, since their independence, or by Great Britain before it, to extend their possessions westward of that line, or of Spain to extend her's eastward of it, by virtue of such acquisitions made of the Indians. These facts prove incontestably, that this principle is not only just in itself, but that it has been invariably observed by all the powers holding possessions in America in all questions to which it applies relative to those possessions. On the authority of the principle first above stated, it is evident that, by the discovery and possession of the Mississippi in its whole length and the coast adjoining it, the United States are entitled to the whole country dependent on that river, the waters which empty into it, and their several branches within the limits on that coast. The extent to which this would go, it is not now possible to say, but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it. It is equally evident, by the application of the second principle to the discovery made by M. de la Salle of the Bay of St. Bernard, and his establishment there on the western side of the river Colorado, that the United States have a just right to a boundary founded on the middle distance between that point and the then nearest Spanish settlement, which it is understood, was in the province of Panuco, unless that claim should be precluded on the principle first above mentioned. To what point that would carry us, it is equally out of our power to say, nor is it material, as the possession in the bay of St. Bernard, taken in connexion with that on the Mississippi, has been always understood, as of right it ought, to extend to the Rio Bravo on which we now insist."

It is now proper to return to the other parts of the negotiation, undertaken in 1805 by Messrs. Monroe and Pinkney at Madrid. With Mr. Pinkney (Charles) of South Carolina, appointed a plenipotentiary in June 1801, the resident min-

ister, was joined, in a special and extraordinary mission, Mr. Monroe, minister at the court of St. James. The examination of the points in dispute between the two countries began in January 1805. We have already spoken of the boundaries of Louisiana. The other topics related to illegal captures, and the suspension of the right of deposit at New Orleans. Spain, never having denied the propriety of making indemnity for illegal captures by bona fide Spanish privateers, this business had been arranged in the convention of 1802, an instrument that country suddenly refused to ratify,\* though made under the eyes of the court, because Louisiana had been ceded to the United States.† The illegal captures were those made by French privateers, either within Spanish jurisdiction, or condemned in the Spanish ports before the month of September 1800, by French consuls. The United States claimed indemnity for these spoliations from Spain. But the claim was rejected; the Spanish government contending that the convention of 1800, between France and the United States, released them from any obligation to pay; and by a supplementary article to that instrument, the American government agreed to make no demand on France for captures or spoliation; an exemption conceded by America, in consideration of being exonerated from the weighty obligation, imposed by the treaty of '78, involving the guaranty of the French possessions. On that

\* This convention was fully ratified by this government in December 1818.

† The Senate ratified this convention in 1804; but it was annulled by the convention of 1819. We take this opportunity to say that the first minister plenipotentiary, sent by Spain to this country, was the chevalier Carlos Martinez de Yrujo; he arrived after the treaty of '95, and his commission was renewed in 1801, when he was created or became a marquis. He is supposed to have been the author of a paper, signed Verus, addressed to the native American, and published in the *Aurora* towards the close of the year '97. He was the last Spanish minister in America, before the renewal of the diplomatic intercourse on the restoration of the royal family. David Humphreys, of Connecticut, was appointed a minister plenipotentiary to Madrid, in May '96.

occasion, the United States avowed themselves satisfied on the subject of spoliation. Now, if a nation, in a treaty, declares herself satisfied for a claim against another party, she obviously can have no further demand against that party. This is a principle founded in the most obvious and simplest rules of justice, and not, at all, created or affected by municipal law. This was, in substance, the reply of Spain, a defence that would not admit of an answer, if the facts, assumed by that government, were correct. But the fact is, the convention of 1800 released only France from indemnity ;—there is no reference in it to a third party. The American government did not make a demand on the French for a wrong, committed by any one of their allies. But, in support of her argument, Spain presented the following view of the case. From the year '95 to the treaty of Amiens, France and Spain were allies, and at war with England ;—France armed privateers in Spanish ports to cruise against English vessels ;—this was lawful ; but the violations she committed on neutrals out of the jurisdiction of Spain, by means of these same privateers, were beyond the control of Spain ;—they were not acts done in Spanish waters, nor by Spanish officers or tribunals. As a proof of this, the French tribunals decided that the captured vessels should be condemned ;—the court of cassation at Paris was full of appeals from the Americans interested, supported by the agents of that country ;—the American merchants themselves, therefore, considered the French responsible, for they appealed to the courts of that government for redress. But, on the other hand it was said, that Spain preserved the attitude of an independent nation till the overthrow of the Bourbon dynasty in 1808, and it would have been highly indecorous in the American government to have intimated that she was not able to maintain her sovereignty within her own acknowledged jurisdiction, as Spain never assumed this defence. Foreign governments would have been little justified in gratuitously presenting it to consideration, or for abstaining on that ground from making perfectly legitimate demands. She possessed every external attribute of a sovereign, independ-

ent nation ;—she had made an honourable and separate peace with Great Britain in 1801, and was not, at any one period, in the condition of a vassal state, or conquered country. M. de Talleyrand, again, came to the aid of the Spanish minister, if not with arguments, at least with opinions unfavourable to the United States. We quote from a letter written by him in July 1804, to admiral Travina, ambassador of his Catholic Majesty at Paris :

“ Respecting the second point in dispute (indemnities), which your excellency does me the honour to speak of in your note, I must say that I had previously no knowledge of it. And, indeed, if I had been informed that his Catholic Majesty's ministers had carried their condescension for the government of the United States so far, as to engage themselves towards it for indemnifying violations, pretended to have been committed by France, I should certainly have received orders from my government to express the dissatisfaction which France must feel on the occasion of so unseemly a deference, and this dissatisfaction would have been expressed still more warmly to the government of the United States than to that of Spain. There is every reason to suppose, that the court of Spain, by thus yielding to an improper demand, has emboldened the American government, and determined it to become pressing and even menacing on this occasion. As for the rest, the explanations formerly given to your court on this point, as well as those, which have been authorized to be given to the government of the United States by the chargé d'affaires of his Imperial Majesty, must enable you to judge of the opinion formed by his Majesty on this question, which, having already been the subject of a long negotiation, and of a formal convention between France and the United States, cannot again become a subject of discussion.”

It will immediately occur, that the opinion of a French minister of foreign relations is not entitled to much consideration, for France was a party deeply interested. The spoils of the confiscated property had been put in her treasury, and of all exemptions or immunities Spain might obtain, France would enjoy the only and full benefit. It is, also, evident, that in regard to these claims Spain was not a party to the convention, and could, therefore, derive no advantage

from it. As Spain never pretended that the claim on her for spoliations, committed by her own privateers, was discharged by that convention, we are not aware that she could be justified in expecting an exemption, under the same instrument, for spoliations by French subjects within her limits. Spain asserts that these acts were committed by foreigners, but they were not committed by stealth, nor were they acts of such sudden, unlooked for violence, that the Spanish authorities had neither time nor the means to interfere. On the contrary, many of the vessels were taken lying in Spanish ports, and all of them carried before French consuls, and condemned in public day. If the acts had been done, as Spain asserted, without her jurisdiction, there would have been no pretence for a claim on her. It is, moreover, the duty of government to see that all foreigners in their intercourse with it are protected in the enjoyment of those rights, to which they are entitled by the laws of nations; and it is a rule as well established, that every state should be responsible for wrongs, committed within its limits by aliens on other aliens. This rule is founded on the plain consideration, that every government is supposed sovereign within its own limits, while it remains independent. Spain, in this particular case, was additionally bound by the special provisions of the treaty of '95 to protect American property. France committed the spoliations within the jurisdiction of Spain, and it is immaterial whether France was eventually liable. The injury was done in Spain; Spanish laws were violated; Spain had cognizance of the case, and her government permitted the wrong; reparation was, therefore, due from her. It is true, the convention of 1800 released France from the claims, if she was eventually answerable for them; but application had already been made to Spain, and her demand would always be good against France. No nation can undertake to adjust the concerns of another without its authority, and no release given by one party can affect a third. France could not have made a convention to compel



Spain to pay for all those demands; by a similarity of reasoning she could not release her from them.\*

Spain refused at the time to do any thing on the subject of the claims for spoliations. Closely allied with France, then exceedingly powerful, her government did not apprehend the fate with which they were threatened. But she was mortified, depressed and irritated by an unfortunate bargain with the Emperor Napoleon respecting Louisiana;—by an accumulating and protracted, angry correspondence with the United States, and by frequent and alarming quarrels and outrages on her frontiers, particularly in regard to the Indians. Most of her concerns with the American government had taken an unfortunate turn, and almost every topic had led, not only to tedious, but to irritating discussions. Spain probably felt, moreover, that she was growing weak. Losing her influence in Europe, and her colonies in America, she naturally parted with every thing with extreme reluctance, well knowing she would never be able to regain her possessions. Her government exhibited the habits of a decaying, perishing state. This arose partly from the modes of doing business, always customary in that country, and partly from the indecision and negligence, which unhappily as well as invariably accompany debility. The United States have never yet come to an open rupture with Spain; but there is no nation in Europe, with whom the relations of the American government have been so unsatisfactory.

We have but one more topic to examine before we arrive at the final termination of the mission of Messrs. Monroe and Pinkney. This related to the right of deposit at New Orleans, suddenly suspended in October 1802, by the intendant of Louisiana. Undoubtedly, a gross violation of the 22d article of the treaty of '95; or at the least it was an

\* This claim has since been adjusted by the act, transferring East Florida to the United States; on that account we have very briefly touched upon the history and principle of these claims, though they rest on the same considerations, as those against other European governments.

unfriendly act to suspend the deposit without notice, the article obviously requiring that another place should be pointed out on the Mississippi for the same purpose. This was not done. The act was disavowed by the king, and the right renewed; but the purchase of Louisiana in 1803, removed all the difficulties attending this transaction. The actual injury done to the navigation on the Mississippi was considerable, and a reparation for this was included in the instructions of the commissioners. This mission terminated in the beginning of 1805; Mr. Monroe having returned to London, Mr. Pinkney was succeeded by James Bowdoin, of Massachusetts, appointed minister plenipotentiary, who remained till 1807. The United States had no minister in Spain during the troubles in that country. The intercourse was renewed again in 1814, by the appointment of George W. Erving, of Massachusetts, a minister plenipotentiary.

## CHAPTER VIII.

## CONVENTION OF 1800 WITH FRANCE.

*Jefferson elected again to France—Jefferson's letters on French Revolution—Permission to return—Jay's letter on Federal Government—De la Luzerne is succeeded by De Moustier—Morris succeeds Jefferson and Ternan de Moustier—Washington's illness—French Revolution embarrassing to Government—Perplexing question whether a Minister should be received from the French Republic—M. Genet—Death of the King—Excellent remark of Morris—Less enthusiasm for the Revolution—Proclamation on neutrality—Remarks on that subject—Very difficult negotiation with Genet—His demands examined—Monroe goes to France—Government solicit the recall of Genet—His unsuitable language—Dismissed—Is succeeded by Fauchet—More temperate—Adet succeeds Fauchet—Outrage on Fauchet—France extremely dissatisfied with state of things—Monroe opposed to administration—Want of instructions—Jay's treaty—Pinckney succeeds Monroe—Not received by the Directory—Ordered to leave France—Extraordinary proceeding—Pinckney, Marshall and Gerry appointed—Not received, though cards of hospitality sent them—Instructions—W. Y. Z.—Talleyrand proposes to treat with one Commissioner only—Rejected—Pinckney and Marshall leave France—Talleyrand's account of negotiation—Gerry remains—Origin of parties—Hostilities—Talleyrand brings on, by means of Pichon, another negotiation—Ellsworth, Murray and Davie appointed to France—Properly received—First Consul—Account of negotiation—Convention—Bonaparte desirous of peace—French government poor—Convention hastily made.*

IN October 1787, Mr. Jefferson was again elected minister to France for three years. He arrived in that country soon after his first appointment, and was presented to the king on the 17th of May 1785, by M. de Vergennes, who still continued the principal minister of state. The period of Mr.

Jefferson's residence at the Court of Versailles was uncommonly important and interesting, but for reasons and considerations, that have little direct connexion with this country. His letters relate principally to the state of France, and towards the close of his mission, contain minute accounts of the events that daily took place under his eyes. In speaking of the assembly of notables, where the first symptoms of disaffection were disclosed, Mr. Jefferson appears to think that the reforms in the ancient monarchy would be only partial, and even to them he alludes with some degree of doubt. We have no recollection of observing, in any part of the correspondence we have had an opportunity of examining, an intimation of the dreadful consummation of this revolution, nor any expressions but those of a favourable kind in regard to the king. But as this great work proceeded, some change naturally took place in his opinions, principally concerning the reformation that would be worked in the government. It is apparent from the two short extracts we are about to introduce, that his sentiments on the subject of the French Revolution did not materially differ from many other enlightened statesmen, both of this country and Great Britain.

May '88. "There is neither head nor body in the nation to promise a successful opposition to 200,000 regular troops. Some think the army could not be depended on; but the breaking men to military discipline is breaking their spirits to the principles of passive obedience. Whatever turn this crisis may take, a revolution in the government seems inevitable, unless foreign war intervene to suspend the present contest, and a foreign war the government will avoid if possible, from an inability to get money."

January '89. "This country advances with a steady pace towards the establishment of a constitution, whereby the people will remove the great mass of those powers, so fatally lodged in the hands of the king." "The intrigues of the clergy and nobility will unite the people and the king."

Great and constant complaints were made by M. de Vergennes and de Rayneval, that the American trade had not

found its way to their country, and notwithstanding the stipulations of the treaty of '78, still all centred in England. This was an extreme disappointment to France; but commerce does not readily follow in the channels, traced out for it on the parchment of diplomatists. France had nothing to give in exchange for our productions; no inducements or advantages to offer, that could break through the fixed commercial habits of two centuries, the convenience of similarity of laws, language, and general customs of trade. At this present hour, France appears to be drawing to her ports some portion of our active, enterprising commerce, but in point of amount how little in comparison with the trade, which continues to pour itself into the bosom of the mother country, and of what little value, compared with the articles of staple, necessary consumption, annually obtained from Great Britain, notwithstanding that our own manufactures follow so close upon those of that wealthy, industrious people. When Mr. Jefferson was in France, there existed insuperable obstacles to a commercial convention, in the wasteful system of profligate farming, particularly as it respected tobacco.

In October 1789, Mr. Jefferson returned to this country, having previously obtained the permission of the government. The official papers, relating to this change, we shall insert at length, on account of the interesting nature of their contents.

“NEW-YORK, 19th June 1789.

“I have at length, my dear sir, the pleasure of informing you (though not officially) that you have leave to return, and that Mr. Short is appointed to take charge of the public affairs during your absence.

“From the time that your letter of the 19th November last was received, viz. 10th February, to the time that our former government gave place to the present one, there was not a single day, on which so many States were represented in the late Congress, as were necessary to make a House.

“Directly after the President came into office, I communicated to him your request. It was the general opinion, that the appointments under the late government expired at that period, and there-

fore that the heads of the different departments were not in capacity to proceed without a new conveyance of authority. It was expected, that the different officers would, without delay, be established, and the business of them put in train. These circumstances retarded a decision on your request.

"Although the departments still remain in the same state, yet the President on the 16th instant informed the Senate, that he had complied with your request, and that he nominated Mr. Short on the 17th. I attended the Senate on the subject, and yesterday they came to a resolution in the following words, viz. 'United States of America. In Senate, 18th June 1789. Resolved that the President of the United States be informed, that the Senate advise and consent to his appointment of William Short, Esquire, to take charge of our affairs at the Court of France, during the absence of the minister plenipotentiary at that Court.'

"For some days past, the President has been indisposed with a headache, attended with fever. This morning I went to his house to communicate the resolution to him, and receive his orders on the subject. He is better, but his physicians thought it best that, for the present, no applications should be made to him on public affairs of any kind; consequently the business in question must be postponed.

"Until the office for foreign affairs is established, the papers and despatches, proper on the occasion, cannot be completed and transmitted. When I consider how long you have waited for the result of your application, and the sensations, which repeated disappointments must have occasioned, I cannot forbear, thus informally, to acquaint you with the preceding facts, and to mention to you as my opinion, that you may venture to return, and that the earliest opportunity will be taken of transmitting to Mr. Short the necessary papers. I mean to send you copies of this letter by various routes, and sincerely wish that it may arrive seasonably, and that I may have the pleasure of congratulating you on your arrival here early in the autumn.

"With the best wishes, and with my sincere esteem and regard, I am, dear Sir, your most obedient and humble servant.

"JOHN JAY.

"The Hon. THOMAS JEFFERSON, Esq."

"Very great and good Friend and Ally.

"As the time limited for the duration of Mr. Jefferson's residence, in quality of our Minister Plenipotentiary \*near your Majesty, will shortly expire, and the public interests require, that he should undertake other functions, we have directed him to take leave of your Majesty, and to assure you of our friendship and sincere desire to preserve and strengthen the harmony and confidence, which so happily subsist between the two nations. We are persuaded that he will do this in the manner most expressive of these sentiments, and of the respect and sincerity with which they are offered.

"We pray God to keep your Majesty under his holy protection.

"Written at the city of New-York the 6th day of April 1790.

"Your good friend and ally,

"G. WASHINGTON.

"To our very great and good friend and ally

"His most christian Majesty."

The count de Moustier, appointed to succeed M. de la Luzerne as minister, arrived in America in 1788, and had the usual audience with Congress in February of the same year. M. de Moustier† was the last envoy sent by Louis

\* This expression, "near your Majesty," "near the French Court," it is well known, is not conformable to the idioms of the English language;—it is a French idiom, peculiar even in that tongue, as the adverb "près" is not followed by a preposition. We have met with it as early as 1775 or '76, in public documents, immediately after the intercourse began with France,—a literal translation from the French, made by some person in the public offices, not acquainted with the true idiom of the two languages. It appears to us an awkward form of speech, and was not required by the absence of appropriate expressions in our language. If we might venture on an opinion in this place, we can, perhaps, exhibit no better specimens of pure idiomatic English than the state papers (both documents and correspondence) of the first Congress, and of our ministers employed abroad during that period.

† M. de Moustier was still living in 1820, near Versailles. He has been conspicuous for his attachment to the royal family. In 1792 he left France, and did not return till 1814.



XVI. to this country, and the first French minister recognised by the Federal Government. He remained till 1790, and was succeeded by Colonel Ternan,\* as a Minister Plenipotentiary. Mr. Short was left at Paris in charge of the affairs of the legation; we extract a paragraph from a letter to him, written by Mr. Jefferson soon after his return.

“ NEW-YORK, July 7, 1790.

“ I mentioned that being about to immerge into the forests of Albemarle, where I should hear nothing of what was passing in the world, I should not write to you again, till I should emerge. I mentioned, too, the footing on which stood the proposal for my translation to a new office—it was not till the middle of February, that a second letter from the President determined me to accept it.

— in the mean time we have been very near losing the President; he was taken with a peripneumony, and on the 5th day he was pronounced by two of the three physicians present to be in the act of death—a successful effort of nature, however, relieved him and us. You cannot conceive the public alarm on this occasion—it proves how much depends on his life.”

The Federal Government, just after its organization, was embarrassed by a difficult and perplexing negotiation. America had scarcely achieved its own independence when a revolution began in France. An uncommonly strong and universal sympathy was immediately awakened in the people of the United States. The great æras of that revolution were celebrated in this country by civic feasts, where the red cap of liberty was passed from head to head,—the well known airs of *Ca ira*, *Les Marseillais* and *La Carmagnole* were sung in the theatres, streets, and on public occasions—the tri-coloured cockade was worn by most of the citizens—the “taking of the Bastille,”—the “declaration of the rights of man,” and “the citizen,”—the “abolition of feudal rights” and of “honorary distinctions,”—the “confederation of the French,”—were commemorated with the roasting of oxen, and other tokens of joy. In the language of the day, the

\* We find this name in the *Moniteur* (A. 1. No. 66) written, Ternant.

American people were disposed to "fraternize" with the French nation. At the moment of the greatest exaltation and most heated state of the public mind, a war broke out between France and England; and though actual hostilities were first committed by the French, the conduct of Great Britain was viewed with deep sensibility and almost general indignation in America.

In the course of this business there arose a question of unusual delicacy and difficulty: not only whether a minister should be received at all from the French Republic, but whether he should be received unconditionally. It was the first time these questions had been submitted to the consideration of the administration, and they were now presented under circumstances of peculiar embarrassment. The government, hardly established, found itself under the necessity of deciding upon the claims of a new state, erected from the ruins of one of the most powerful nations of Europe. No one doubted but that the ancient government of the Bourbons was for the moment overthrown—the king in the Temple, a state prisoner, the noblesse and clergy emigrated, the army disorganized and succeeded by the national guard, the Austrians and Prussians expelled, or withdrawn beyond the Rhine, and the National Convention, having met in September 1792, decreed the abolition of royalty and the foundation of the Republic. It was, also, quite obvious, that the progress of the Revolution had been regular and systematic. The crimes and bloody deeds of that period do not admit of defence, but they were susceptible, at the time, of an explanation. No great and sudden changes in a highly civilized condition of society take place without violence; and when every sort of government, every description of police or authority was obliterated, atrocities could not excite much astonishment in a city of the size of Paris, already too well known in history by one of the most sanguinary transactions of which we have any record. The death of the King, whatever feelings of horror and indignation it might awaken, was considered by many as a political event; even, indeed, by those eminent men, whose proceedings in

the Old Jewry have only been rescued, by the eloquence of Mr. Burke, from that common and wide grave, into which the numberless writings and dissertations on the French Revolution have fallen. It was one more sacrifice, as Louis himself often said, to the Revolution. Every step, deep in gore as they certainly were, the French people seemed to gain something on the score of liberty. Through the different stages of the States General, the union of the three orders, the National Constituent Assembly, the Legislative Assembly, and the National Convention, when the Republic was decreed, the freedom of the citizen was apparently making a conquest over the oppressions and abuses of the ancient and royal government. It seems, therefore, just to remark, that if the Republic was not established, at least the monarchy was overthrown. There was, also, a strong feeling of confidence in America that the Revolution would succeed ; not only, because it was the general and most ardent hope and wish of the people, but the complete success of their own undertaking naturally led them to believe, that the efforts of a nation in the same cause would be attended with results equally fortunate.

We find the Cabinet determined, with an unanimous voice, to receive the French Minister, but a difference of opinion appears to have existed, as it respects the conditions, with which this act should be accompanied. Louis XVI. had personally been a constant and great friend and benefactor to America. His portrait and that of the queen, a present to the Congress of the Confederation, for a long time hung in a conspicuous place in the hall of that assembly. The first celebrated treaty of alliance and commerce had been concluded and signed in his name, and by his ministers, and the Republic, whose representative now presented himself to the notice of the people and the administration, was founded in the blood and on the wrecks of the Bourbon family. Again, the royal government was, still, nominally in existence ; recognised by all the principal powers of Europe ; and exercised by a regency at Coblenz on the Rhine, in the name of Louis XVI., while he lived, and at his death,

the Dauphin, his son, then a prisoner in the Temple, was immediately proclaimed by the title of Louis XVII. A civil war, limited in extent, though remarkably destructive of life, also raged with uncommon fury in the Bocage or La Vendée. This was the situation of things. The Republic, on one side, actually standing in possession of the authority and the territory belonging to the French nation; with a slight probability, indeed, on the other, of a restoration of the royal government. It could not, therefore, be considered a departure from the laws of nations to receive the French Minister; and this the President resolved to do, without any qualifying or explanatory act.

Louis XIV., by acknowledging the Pretender, gave great offence to the English Government; and it was alleged to be one of the principal causes of the war that England declared at the time against France. The subject of recognising new governments has been much discussed, but no precise rules have been laid down for the regulation of states in this particular. Writers place, perhaps, more stress upon the circumstance of actual possession than any other. Foreign nations have clearly no right to interfere in the domestic concerns of other countries; but when one party is obviously master of the power and territory, the neutral state is fully warranted in acknowledging it. And if the first party should ultimately be overthrown and expelled, the successful one would not have just cause of complaint against the neutral. The reason of this rule is apparent. It is highly desirable that the intercourse of civilized nations should be maintained, and the impropriety, nay, the impossibility of the case precludes a close investigation into the domestic affairs of foreign states.

M. Genet, appointed by the Executive Council, Minister to the United States, in January 1793, arrived in this country, in April of the same year, in the *Ambuscade* frigate. He landed in Charleston, South Carolina, and was received with marks of respect, attention and enthusiasm. While at Charleston, M. Genet authorized different persons to fit and arm vessels,—to enlist men in that port,—and gave commis-

sions to cruise, and commit hostilities upon nations, with whom the United States were at peace, the port of Charleston being particularly convenient for the purpose of molesting the English West India trade. Captures, made by those vessels, were soon brought in ; and the French Consuls began, at once, under the authority of the Minister, to try, condemn, and authorize their sale. M. Genet was not at this time *accredited as a foreign Minister by the Government of this country*, and actually did not arrive at the seat of government, Philadelphia, till the middle of May. His progress through the country, from Charleston, was attended with every circumstance that could manifest the very deep interest the people took in the French Revolution, and the satisfaction with which a representative from that republic was received in the United States. The Minister must have been well satisfied, that the nation were exceedingly desirous of a union with France ; and were quite prepared to enter, with that country, into a war against the monarchies of Europe. These sentiments soon became deeply impressed upon the mind of M. Genet,—a man, obviously, of a sanguine temperament, heated and excited by the passions and politics of the times.

It is quite in course here to mention a circumstance, that first appears to have allayed the fever heat of the public pulse ; to have awakened the earliest feelings of distrust in the political success of the French. We allude to the death of the King, which happened about this period, and whose willingness to engage in our Revolution was undoubtedly remembered with gratitude. In the outset, the Americans beheld the French revolution with a feeling of delight and admiration, unmingled with that intense anxiety, and often extreme despondency, with which they watched the progress of their own. But, left free to examine and deliberate, the atrocities that accompanied it, and that seemed to accumulate, as the abuses, against which they were levelled, disappeared, produced in a short time, a slow, but unfailling reaction in the public mind. The execution of the king, without doubt, weakened the party of the National Conven-

tion in the United States. This sacrifice, even if necessary in a political view, was, nevertheless, a violation of justice, and the rights of the citizen; for, if Louis was no longer a king, he was still a man, a citizen, according to the laws of the French Republic. These circumstances made a suitable impression upon the American people, always accustomed to the forms of an equal, though undeviating justice. From the 10th of August, 2d of September, and the period of the King's execution, the revolution decidedly lost friends in this country. This sentiment pervaded the breasts of men whose devotion, even to the French Republic, was beyond suspicion. The celebrated Thomas Paine, it is known, voted against the death of Louis; though, as Marat artfully insinuated, being a Quaker, he was in conscience opposed to capital punishments. "France," said Thomas Paine, in the convention on the question of "*Sursis*," "has now but a single ally, the United States. The person, to whom the present discussion relates, is regarded by that people as their best friend. His execution, I assure you, will diffuse among them a general grief. I propose to you to conduct Louis to the territory of the United States. After a residence of two years, Mr. Capet will find himself a citizen of America. Miserable in this country, to which his absence will be a benefit, he will be furnished the means of becoming happy in another."

In the early part of the year '92 Gouverneur Morris of New Jersey, was appointed to France, a minister plenipotentiary, as the successor of Mr. Jefferson. He was in Paris at the time of the execution of the king, and at the breaking out of the war of the first coalition. He makes (Feb. 13, 1793) some excellent remarks, truly prophetic, on the consequences of the first mentioned event. "Since my last I have every reason to believe that the execution of Louis 16, has produced on foreign nations the effect I had imagined. The war with England exists, and it is now proper, perhaps, to consider its consequences. In one shape or another this nation will make a bankruptcy. The mode, now talked of, is to pay off the debt in a species of paper money, which shall be receivable for the

sales of confiscated property, and shall bear no interest. When once the whole of the debt shall be fairly afloat, the single word *depreciation* will settle all accounts. You will say, perhaps, the measure is unjust,—to which I answer, that in all popular governments, strongly convulsed, it is a sufficient answer to all arguments, that the measure proposed, is for the public good. Supposing then the debt of France was liquidated, she presents a rich surface with 20,000,000 of people, who love war better than labour. Be the form of government what it may, the administration will find war abroad necessary to preserve peace at home. The neighbours of France must, therefore, consider her as a great power, essentially belligerent, and they must measure themselves by the scale of her force. In this view of the subject, to take her Islands is to possess but the parings of her nails. *Strange as it may seem, the present war on the part of France is a war of empire; and if she defends herself, she commands the world.*"

In April 1793, the celebrated Proclamation of neutrality was issued.\* The historian of the first President makes the following remarks in relation to that subject :

\* "Whereas it appears, that a war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands on the one part, and France on the other; and the duty and interest of the U. States require, that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the belligerent powers; I have, therefore, thought fit, by these presents, to declare the disposition of the U. States to observe the conduct, aforesaid, towards these powers respectively; and to exhort and warn the citizens of the U. States, carefully to avoid all acts and proceedings, whatsoever, which may in any manner tend to controvert such dispositions. And I do, hereby, also, make known, that whosoever of the citizens of the U. States shall render himself liable to punishment or forfeiture under the laws of nations, by committing, aiding, or abetting hostilities against any of the said powers, or by carrying to any of them, those articles, which are deemed *contraband by the modern usage of nations*, will not receive the protection of the U. States against such punishment or forfeiture; and further, that I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all per-



"This measure derives importance from the consideration, that it was the commencement of that system to which the American Government afterwards inflexibly adhered, and to which much of the national prosperity is to be ascribed. It is not less important in another view. Being at variance with the prejudices, the feelings, and the passions of a large portion of the Society, and being predicated on no previous proceedings of the legislature, it presented the first occasion, which was thought a fit one, for openly assaulting a character, around which the affections of the people had thrown an armour, theretofore deemed sacred, and for directly criminating the conduct of the President himself. It was only by opposing passions to passions, by bringing the feelings in favour of France in conflict with those in favour of the chief magistrate, that the enemies of the administration could hope to obtain the victory."

Under the constitution two parties are concerned in the interpretation of treaties, the judiciary and the executive, but the authority or jurisdiction of the first is exclusively of a domestic nature—to the latter is confided the exercise of the power between this and foreign governments. When a treaty has been concluded and ratified in the usual form, the executive gives notice of the fact by proclamation;—this is a constitutional exercise of authority—another is to declare the state of the nation, where dangers in the political condition of the world are so sudden or important, as to put in jeopardy the rights or the property of the citizens. The proclamation of '93, was a legitimate exercise of authority, and in a great degree necessary from the consideration, that the interpretation of the treaty of alliance, assumed by the executive, would have rendered many acts, violations of neu-

sons, who shall, within the cognizance of the Courts of the U. States, violate the laws of nations with respect to the powers at war, or any of them.

"Done, &c.

"GEORGE WASHINGTON.

"By the President,

"TH. JEFFERSON."

trality, which a portion of the nation considered harmless. It became, therefore, the duty of the Executive to signify to the people the official construction of this instrument. The proclamation was constitutional, although the interpretation might have been erroneous;—it declares the United States to be in condition of neutrality;—this is the only fact it professes to establish, or about which any dispute can possibly arise. This state of things was notified in April to the respective foreign ministers at Philadelphia, in a circular from the Department of State.

“ Sir,—As far as the public gazettes are to be credited, we may presume that war has taken place among several of the nations of Europe, in which France, England, Holland and Prussia are particularly engaged. Disposed ourselves to pursue steadily the ways of peace, and to remain in friendship with all nations, the President of the United States has thought it expedient, by the proclamation of which I enclose you a copy, to notify this disposition to our citizens, in order to intimate to them the line of conduct for which they are to prepare, and this he has done without waiting for a formal notification from the belligerent powers. He hopes that those powers, and your nation in particular, will consider this early precaution as a proof the more candid, as it has been unasked, of the sincere and impartial intentions of our country, and that what is meant merely as a general intimation to our citizens, shall not be construed to their prejudice in any courts of admiralty, as if it were conclusive evidence of their knowledge of the existence of war, and of the powers engaged in it. Of this we could not give them conclusive information, because we have it not ourselves, and till it is given to us in form, and so communicated to them, we must consider all their acts as lawful, which would have been lawful in a state of peace.

“ Mr. Ternant, Mr. Van Berckel, Mr. Hammond.”

The Cabinet declared, also, by this instrument, the construction it intended to put on the \* 11th article of the treaty of alliance with France. This article imposed, among other

\* See Treaty in 2d Chapter.

things, upon the United States the obligation of protecting the Islands belonging to the French in the West Indies, several of which fell, about this time, into the hands of the British. But a step of the kind would have led to an immediate declaration of war on the part of Great Britain. The article was considered to be applicable to a defensive war only, and that good faith did not require America should take any part in hostilities, till the present French government was obviously and firmly established. The last ground was, perhaps, a just and sound one, but in receiving M. Genet, the administration had furnished the only proof in its power, that it considered the French Republic endowed with that character and condition. Whatever government, America recognised as existing in France, had a right to require the fulfilment of the guaranty. Some doubt might reasonably prevail as to the other ground assumed by the Cabinet, not only from the phraseology of the article, but from the extreme difficulty of ascertaining, in all cases, the true character of a defensive or offensive war. The act of the war itself, the mode of conducting it, may be altogether offensive, and yet the immediate cause, defensive; nations may be driven to hostilities by the oppressive conduct of others; few manifests of war are published, that do not present to the world abundant reasons for a resort to arms. The article is, therefore, incomplete, because it does not admit of an immediate and general application;—the party called upon to execute it, is at liberty to construe it, and is at all times the judge, whether assistance is justly required. But, at best, the construction of the government is an implied one, for the language of the stipulation is plain and on the surface free from ambiguity. We confess we are pleased with a remark of Gouverneur Morris on this subject in a letter of December 21, 1792.

“The circumstance of a war with Great Britain becomes important to us in more ways than one. The question respecting the guaranty of American possessions, may, probably, be agitated, especially if France should attempt to defend her islands. There will, doubtless, be many in the United States, who will contend that the treaty made with the King is, at the least, suspended, if not

abrogated, by the abrogation of his office and authority. Without entering into the numerous arguments on this subject, some of them forcible, all of them plausible, I will only pray your indulgence, while I express my wish, that all our treaties, however onerous, may be strictly fulfilled, according to their true intent and meaning. 'The honest nation is that, which like the honest man,

'Hath to his plighted faith and vow, forever firmly stood,  
And tho' it promise to its loss, yet makes that promise good.'"

We shall now give a sketch of the proceedings of M. Genet with this government. He came to the United States authorized to conclude an alliance both defensive and offensive. We cannot do better than give his own words; it is not only a specimen of the language, but of the sentiments and feelings of the times.

"Single against innumerable hordes of tyrants and slaves, who menace her rising liberty, the French nation would have a right to reclaim the obligations, imposed on the United States by the treaties, she has contracted with them, and which she has cemented with her blood; but strong in the greatness of her means and of the power of her principles, not less redoubtable to her enemies than the victorious arm, which she opposes to their rage, she comes in the very time, when the emissaries of our common enemies are making useless efforts to neutralize the gratitude—to damp the zeal—to weaken or cloud the view of your fellow citizens—she comes, I say, that generous nation—that faithful friend, to labour still to increase the prosperity, and add to the happiness, which she is pleased to see them enjoy.—The obstacles raised with intentions, hostile to liberty, by the perfidious ministers of despotism—the obstacles, whose object was to stop the rapid progress of the commerce of the Americans, and the extension of their principles, exist no more. The French republic, seeing in them but brothers, has charged me to propose to your government, to establish in a true family compact, that is, in a national compact, the liberal and fraternal basis, on which she wishes to see raised the commercial and political system of two people, all whose interests are confounded."

It was with the feeling and sentiments disclosed in this letter, spread wide through the community and deep seated,

that the government was compelled, in the unlucky turn of affairs, to contend. The struggle was a difficult one; for, with the American people, these opinions were not only pure and sincere, but they were permanent; the same with which the country was inspired at the time of its own revolution; and they entered, as a principal element, into the form of the government and the organization of society. At this moment, they appeared, it is true, inflamed and aggravated by sympathy for the French, by indignation at the efforts of the European governments, directed against the republic; but it was not a frenzy of the hour, like the scene exhibited in France. America manifested its true legitimate disposition, partaking of the influence of the times.

We shall examine those parts of M. Genet's claims, only, that involve principles of the public laws of nations, or that illustrate the system adopted by this country.\* This enquiry is not entirely without its advantages. It has been the aim of the government, since that period, to follow the policy then promulgated; and the principal duties, incumbent on neutral nations, may be ascertained, by an examination of the demands of the French minister. Not intending to mention the instances of violation of public law that occurred, we shall confine ourselves to the general principles, for which M. Genet contended. He asserted "a right of arming in our ports, of enlisting our citizens, and of exercising consular jurisdiction;" and denied to the government the right, either of "restraining him, or punishing them." This is the language, and substance, of the demand.† The question was, not of a vessel arming in her own defence, as no cases of that description had been reported; on the contrary, the orders of the government were directed against vessels that were manned, armed and equipped in our ports, for the purpose of committing hostilities on the subjects of a state, with which this country was at peace. The proclamation of April 22d, did not allow this practice. That instrument enjoined

\* Letter of Mr. Jefferson, of August 1793.

† See his note of May 25, 1793, to the Secretary of State.

upon the citizen to observe a friendly conduct towards all belligerent powers, "according to public law, and the special treaties existing between them and this country." A preparation of hostilities is the reverse of this deportment. The treaty with France, of '78 did not allow it; for it permitted only (17th art.) the armed vessels of either party to enter with their prizes, and to depart freely from the ports of the other. No possible construction of that article can, in any way, justify the manning and equipping of vessels, to commit hostilities; neither do the laws of nations,\* or treaties with

\* Vattel, vol. ii. p. 332. Here we are to consider the obligations and rights flowing from neutrality. In order rightly to understand this question, we must avoid confounding, what may lawfully be done, by a nation that is free from all engagements, with what she may do, if she expects to be treated as perfectly neutral in a war. As long as a neutral nation wishes securely to enjoy the advantages of her neutrality, she must, in all things, show a strict impartiality towards the belligerent powers; for, should she favour one of the parties, to the prejudice of the other, she cannot complain of being treated by him as an adherent and confederate of his enemy. Her neutrality would be a fraudulent neutrality, of which no nation will consent to be the dupe. But the present question is, to determine what may lawfully be done; not what prudence may dictate, according to circumstances. Let us, therefore, examine, in what consists that impartiality, which a neutral nation ought to observe.

It solely relates to war, and includes two articles. 1. To give no assistance where there is no obligation to give it; nor voluntarily to furnish troops, arms, ammunition, or any thing of direct use in war. I do not say, "to give assistance equally," but, "to give no assistance;" for it would be absurd, that a state, at one and the same time, should assist two nations, at war with each other; and besides, it would be impossible to do it with equality. 2. In whatever does not relate to war, a neutral and impartial nation must not refuse, to one of the parties, on account of his present quarrel, what she grants to the other. This does not deprive her of the liberty to make the advantage of the state still serve as her rule of conduct, in her negotiations, her friendly connexions, and her commerce. When this reason induces her to give preferences, in things which are ever at the free disposal of the possessor, she only makes use of her right, and is not chargeable with partiality.

I have said, that a neutral state ought to give no assistance to either

other states, at all, authorize the proceeding. These treaties are a part of the law of the land, and it is incumbent on the proper law tribunal to enforce their provisions. The citizens can, therefore, have no right to violate the provisions of those treaties. If the citizens, themselves, were not possessed of the privilege of committing acts of hostility, or offence, against those states, with whom the nation was at peace, we are not aware of any provision of national law, or, in the particular case now under consideration, of any provision of the treaty of '78, that can confer this right or power upon an alien. Again, the arming and equipping of vessels, is, obviously, an act of sovereignty; an act that cannot justly be exercised in the United States, without the permission of the government.\* As to the treaty, these are the words of the 22d article, the only one, *with the exception already mentioned*, that relates to this matter:—"It shall not be lawful for any foreign privateers, not belonging to subjects of his Most Christian Majesty, nor citizens of the said United States, who have commissions from any prince or state in enmity with either nation, to fit their ships in the ports of either the one or the other of the aforesaid parties." This article denies the privilege of arming, to privateers of any nation, at war either with France or America, in the ports of the other party. The only ground upon which France claimed the privilege, under this article, was, therefore, that of implication. The article not expressly excluding French vessels, at a time when France was at war with England,

of the parties, when "under no obligation to give it." This restriction is necessary. We have already seen, that when a sovereign furnishes the moderate succour due in virtue of a former defensive alliance, he does not become an associate in the war (§ 101); he may, therefore, fulfil his engagement, and yet observe a strict neutrality. When a war breaks out between two nations, all other states, that are not bound by treaties, are free to remain neuter; and if either of the belligerent powers attempted to force them to a junction with him, he would do them an injury, inasmuch as he would be guilty of an infringement on their independency, in a very essential point.

\* Vattel, 1. 3. 15.



Spain and Holland, all on friendly terms with the United States, M. Genet insisted with great vehemence upon the use of the right.

"It results from this note, Sir, that the commissions, transmitted in virtue of the orders of the Executive Council of the republic of France to the French vessels in the ports of the United States, are merely an authority to arm themselves, founded upon the natural right and constant usage of France, that these commissions have been expedited, at all times, in like circumstances, that their distribution cannot be considered, but as an act of consular administration, and not of sovereignty, and that every obstruction by the government of the United States to the arming of French vessels must be an attempt on the rights of man, upon which repose the independence and laws of the United States; a violation of the ties, which unite the people of France and of America, and even a manifest contradiction of the system of neutrality of the President, for, in fact, if our merchant vessels and others are not allowed to arm themselves, when the French alone are resisting the league of all the tyrants against the liberty of the people, they will be exposed to inevitable ruin in going out of the ports of the United States, which is certainly not the intention of the people of America. Their fraternal voice has resounded from every quarter around me, and their accents are not equivocal; they are as pure as the hearts of those, by whom they are expressed, and the more they have touched my sensibility, the more they must interest, in the happiness of America, the nation I represent; the more I wish, Sir, that the Federal Government should observe, as far as in their power, the public engagements, contracted by both nations, and that by this generous and prudent conduct, they will give at least, to the world the example of a true neutrality, which does not consist in the cowardly abandonment of their friends in the moment, when danger menaces them, but in adhering strictly, if they can do no better, to the obligations they have contracted with them. It is by such proceedings that they will render themselves respectable to all powers, that they will preserve their friends, and deserve to augment their number."

This, however, is not the usual mode of construing treaties, or any diplomatic instrument. Nations possess and en-

joy only what is secured to them by stipulation. The two parties, in this case, agreed to exclude foreign privateers; they are silent as to their own vessels.

"It was of value to each party, to exclude its enemies from arming in the ports of the other, and could in no case embarrass them. They, therefore, stipulated so far mutually. But each might be embarrassed by permitting the other to arm in its ports. They, therefore, would not stipulate to permit that. Let us go back to the state of things in France, when this treaty was made; and we shall find several cases, wherein France could not have permitted us to arm in her ports. Suppose a war between these states and Spain. We know that, by the treaties between France and Spain, the former could not permit the enemies of the latter to arm in her ports. It was honest in her, therefore, not to deceive us by such a stipulation. Suppose a war between these states and Great Britain. By the treaties between France and Great Britain, in force at the signature of ours, we could not have been permitted to arm in the ports of France. She could not, then, have meant, in this article, to give us such a right. She has manifested the same sense of it again, in her subsequent treaty with England, made eight years after the date of ours; stipulating, in the 16th article of it, as in our 22d, that foreign privateers, *not being subjects of either crown*, should not arm against either in the ports of the other. If this had amounted to an affirmative stipulation, that the subjects of the other crown might arm in her ports, *against us*, it would have been in direct contradiction to her 22d article with us."

It has already been said that M. Genet, on his first arrival in Charleston in April '93, issued commissions to privateers, and authorized the enlisting of men, both Americans and Frenchmen, for the service of the Republic of France. An investigation of this business was undertaken in the autumn of the same year by the Legislature of South Carolina, and satisfactory evidence produced, that several citizens had received commissions to enlist men within the United States, for the purposes of hostility against the enemies of France. The Governor issued a proclamation in December, forbidding these practices, and the law officers of the state were directed by the Legislature to institute prosecutions against

certain persons, named in the report of the Committee of Investigation. Before this took place, however, two citizens of the United States, Gideon Henfield and John Singletary, had been arrested on board a French privateer and conducted to prison. M. Genet demanded their release in the following words:

"I have this moment been informed that two officers in the service of the Republic of France, citizens Gideon Henfield and John Singletary, have been arrested on board the privateer of the French Republic, the Citizen Genet, and conducted to prison. The crime laid to their charge, the crime which my mind cannot conceive, and which my pen almost refuses to state, is the serving of France, and defending with her children the common and glorious cause of liberty.

"Being ignorant of any positive law or treaty, which deprives Americans of this privilege, and authorizes officers of police arbitrarily to take mariners in the service of France, from on board their vessels, I call upon your intervention, sir, and that of the President of the United States, in order to obtain the immediate release of the above mentioned officers, who have acquired, by the sentiments animating them, and by the act of their engagement, anterior to every act to the contrary, the right of French citizens, if they have lost that of American."

These two cases include the whole principle involved in the important discussion of the right of a citizen to commit an act of hostility, under his own or foreign colours, upon a state with which his own country is at peace. On this subject we shall quote the opinions of the Attorney General and an extract from a letter of Mr. Jefferson, Secretary of State.

"1st. It may well be doubted how far the Minister of France has a right to interfere. Henfield is a citizen of the United States, and it is unusual, at least, that a foreign power should interfere in a question, whether, as a citizen, a man has been guilty of a crime? Nor can any authority be derived from Henfield being under the protection of the French Republic, because, being still a citizen, he is amenable to the laws which operate on citizens, and the very act, by which he is said to have been taken under such protection, is a violation of the sovereignty of the United States. If he be in-

nocent, he will be safe in the hands of his countrymen: if guilty, the respect due by one nation to the decrees of another, demands that they be acquiesced in.

"2. But Henfield is punishable, because treaties are the supreme law of the land, and by treaties with three of the powers at war with France, it is stipulated that there shall be a peace between their subjects and the citizens of the United States.

"3d. He is indictable at the common law, because his conduct comes within the description of disturbing the peace of the United States.—If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens; but this is not true, either on the general principles of society, or by our constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first position was not true, and no citizen has a right to go to war of his own authority, and for what he does without right, he ought to be punished. Indeed, nothing can be more obviously absurd than to say, that all the citizens may be at war, and yet the nation at peace. It has been pretended, indeed, that the engagement of a citizen in an enterprize of this nature was a divestment of the character of a citizen, and a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration and other acts, manifesting their intention, and may then become the subjects of another power, and free to do whatever the subjects of that power may do. But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent, by giving it the force of a dissolution of the obligations of the criminal to his country."

By the direction of M. Genet, some of the French consuls established admiralty courts in this country, and exercised admiralty jurisdiction over vessels taken by French cruisers. This assumed right deprived our own courts in all cases of jurisdiction over vessels brought into, or claimed in, our waters, as prizes of one of the belligerents. It

could not, therefore, be permitted to our own tribunals to ascertain, under any circumstance, whether prizes, claimed as such, were justly so or not. Mr. Jefferson concluded a convention at Versailles in November 1788, with M. de Montmorin, one of the Secretaries of State, defining the powers, privileges, and duties of consuls. This convention was to remain in force twelve years; but it contains no stipulation, whatever, allowing consuls to exercise admiralty jurisdiction. Neither does the treaty of '78 cede any similar power or jurisdiction to the French consulates. The courts of the United States cannot pretend to exercise a jurisdiction over vessels taken on the high seas, for it is matter of common usage, that the decision of all such questions shall be referred to the courts of the sovereign of the captor. This right is, moreover, confirmed by the 17th article of the treaty of '78. The United States have never pretended to enquire into the validity of it; but as they have, in no public act or instrument, whatever, divested their own courts of the cognizance of all offences committed within their own waters, the French consulates obviously usurped power that belonged to other tribunals. It is not only the right, but, also, the duty, of the American government, to protect the vessels of neutrals within their own jurisdiction. Indeed, this provision is inserted in most of their treaties, particularly with France itself. Nations differ as to the distance to which this right extends, but in no case is the distance claimed (except in the doctrine of close seas) so great, as to make the rule unreasonable. A reasonable distance, therefore, under all the circumstances of the case, is the extent of jurisdiction to which the right is applied. If our courts have not this jurisdiction, it is quite evident, that neutrals may be taken in our harbours, from our wharves, and condemned as legal prizes in our own cities, by the agents of a foreign government.

The French minister maintained this pretension with more vehemence and a more resolute spirit than any under the treaty of alliance;—exceedingly valuable to his government, as it would have converted the whole American coast

into a shelter for the captures of all privateers under the French flag. We shall recite entire a letter he wrote on this subject to Mr. Jefferson.

"Sir—Discussions are short when matters are taken upon their true principles. Let us explain ourselves as republicans. Let us not lower ourselves to the level of the ancient politics by diplomatic subtleties. Let us be as frank in our overtures—in our declarations, as our two nations are in their affections, and by this plain and sincere conduct arrive at the object by the shortest way.

"All the reasonings, sir, contained in the letter, which you did me the honour to write me the 17th of this month, are extremely ingenious; but I do not hesitate to tell you, that they rest on a basis, which I cannot admit. You oppose to my complaints, to my just reclamations upon the footing of right, the private or public opinions of the President of the United States; and this Egis, not appearing to you sufficient, you bring forward aphorisms of Vattel to justify or excuse infractions, committed on positive treaties. Sir, this conduct is not like ours. In arriving among you, I have, with candour, said that the French nation, cherishing the interests of the United States more than our own, occupied themselves but on their happiness in the midst of surrounding dangers, and instead of pressing them to fulfil towards them all the obligations, imposed on them by our treaties, by gratitude and by provident policy, they have just granted new favours to their commerce, opening to them all the ports in the two worlds, in a word, assimilating them to her own citizens.

"Such amicable and disinterested proceedings should render the federal government, sir, industrious in seeking, at least, all the means of serving us as far as circumstances would permit them; but instead of waiting, till Congress had taken into consideration the important subjects, which should already have occupied them, until they have determined whether the war of liberty, whether the fate of France and her colonies were indifferent objects for America, until they had decided, whether it was the interest of the United States to profit or not, of the situation in which French magnanimity places them, they have been urged on by, I know not what, influence to pursue another conduct. They have multiplied difficulties and embarrassments in my way. Our treaties

have been unfavourably interpreted. Arbitrary orders have directed against us the action of the tribunals; indeed, my diplomatic reception excepted, I have met with nothing but disgust and obstacles in the negotiations I have been charged with.

"It is not thus that the American people wish, we should be treated. I cannot even suppose, and I wish to believe, that measures of this nature were not conceived in the heart of General Washington—of that celebrated hero of liberty. I can attribute them only to extraneous impressions, over which time and truth will triumph. I request you, therefore, sir, to lay before this first magistrate of your Republic the two enclosed protests, which have been just transmitted to me by the Consuls of the Republic of France at New-York and Philadelphia. You will see therein, that these officers complain that French prizes, the jurisdiction of which belongs exclusively to the consular tribunals, have been seized in these two ports by orders of the President. I expect from the equity of the Federal Government, sir, the immediate redress of these irregularities, and I venture to hope, also, that the President would be pleased to examine, again, the affair of the ship *Republican* of New-York, and consider, whether (independent of the right which we have to fit out privateers) any of the expressions used by Consul Hauterive to reclaim the giving up of the seizure, made of that vessel, proves that she has been armed for this purpose. The citizen Hauterive has clearly shown, on the contrary, that she was armed by Frenchmen at the time, when the most religious of all duties prompted them to fly from all parts of the world to the succour of their country, and to fulfil towards her those duties, to which the Americans would be equally bound, if we had not the desire to leave to their wisdom and their honour the umpirage of their conduct. It is incontestable, that the treaty of commerce (art. 22d) expressly authorizes our arming in the ports of the United States, and interdicts that privilege to every enemy nation. Besides, this act forms but a part of our conventional compacts, and it is in them, collectively, that we ought to seek contracts of alliance and of commerce, simultaneously made, if we wish to take their sense, and interpret, faithfully, the intentions of the people, who cemented them, and of the men of genius, who dictated them. If you cannot protect our commerce and our colonies, which will, in future, contribute much more to your prosperity than to our own,



at least, do not arrest the civism of your own citizens, do not expose them to a certain loss by obliging them to go out of your ports unarmed. Do not punish the brave individuals of your nation, who arrange themselves under our banner, knowing perfectly well, that no law of the United States gives to the government the said power of arresting their zeal by acts of rigour. The Americans are free, they are not attached to the glebe, like the slaves of Russia, they may change their situation, when they please, and by accepting at this moment the succour of their arms, in the habit of trampling on tyrants, we do not commit the plagiat, of which you speak. The true robbery, the true crime, would be to enchain the courage of these good citizens, of these sincere friends to the best of causes.

"I am ignorant, sir, of the constitutional Judges, to whom the Federal government appear to have it in contemplation to refer the different-questions of public right, which have arisen between us; but it appears to me, that these judges can be looked upon only as counsellors, since no particular tribunal has the right or power to interpose between two nations, whose only arbiters, when they have a sincere desire to live fraternally and amicably together, must be, in the present state of human societies, good faith and reason."

Various violations of our sovereignty were at this time committed by French cruisers, and equally of our jurisdiction by French consulates. The government, however, conducted itself with steadiness and firmness; and the vessels, thus illegally taken and condemned, wherever they could be reached, were restored.

The language of M. Genet was, also, unbecoming and exceptionable. The following passages, extracted from a letter of Mr. Jefferson, the Secretary of State, are especially obnoxious to censure. We have thought it necessary to mention them, as the recall of M. Genet was solicited by this government. The reader will be satisfied, we believe, that it was not done without abundant reason.

"The philosophical principles proclaimed by the President.

"This refusal tends to accomplish the infernal system of the king of England, and of the other kings, his accomplices, to destroy by famine French freemen and freedom.

"That the secretary of war, to whom I communicated the wish of our governments of the Windward Islands, to receive promptly some cannon and some fire arms, which might put into a state of defence possessions, guarantied by the United States, had the front to answer me, with an ironical carelessness, that the principles, established by the President, did not permit him to send us so much as a pistol.

"In vain the desire to preserve peace leads you to sacrifice the interests of France to this interest of the moment, in vain the thirst of riches preponderates against honour in the political balance of America; all this management, all these condescensions, all this humiliation, end in nothing. Our enemies laugh at it, and the French, too confident, are punished for having believed, that the American nation had a flag, that it had some respect for its laws, some conviction of its force, and that it had some sentiment of its dignity. It is not possible for me to paint to you all my sensibility at this scandal, which tends to the diminution of your commerce, to the oppression of ours, and to the debasement and vilification of republics.

"If our fellow citizens have been deceived, if you are not in a condition to maintain the sovereignty of your people, speak! we have guarantied it, when we were slaves. We know how to render it respectable, being free."\*

The pretensions of the French Envoy, coupled with the mode in which they were asserted, not only to the government but even to the people, made it at last absolutely necessary that an application for his recall should be transmitted. The American minister at Versailles was, accordingly, directed, in the month of August '93, to request that a successor might be appointed. M. Genet was recalled with an expression of the disapprobation of his government, and about the same time, the recall of Gouverneur Morris was, also, solicited. To this the American Executive acceded. He was replaced by Mr. Monroe, and M. Fauchet succeeded M. Genet. It is proper, however, to say that in consequence of intelligence having been received that M. Genet was fitting out two

\* Anglophobists, or Anglomen, was the term employed by M. Genet, to designate the determined friends of the neutral policy.

expeditions in the territory of the United States against Spain, the government determined to suspend his functions within — days, unless one or the other house of Congress should not think it advisable. Congress obviously had nothing to do with this business.\*

We may be permitted in this place to make a remark or two on the conduct of the French envoy. The circumstances of the times, and the fact that his recall was the first exercise of that sort of power by the government, give more than usual importance to his case. M. Genet did the cause of the Revolution a serious injury in America. His intemperate language, his extraordinary communications, irritated the government, and alarmed the grave, thinking part of the nation. No negotiations could be held with him, and though his appearance here awakened a prodigious popular feeling, as the presence of any other minister from the "Republic" would have done, we have no doubt but that his public deportment soon produced a serious reaction, fatal, indeed, to the expectations of the National Convention. Never was one nation more disposed to unite with another, than was America with France. M. Genet's violence, and deplorable ignorance, or as lamentable indifference of indispensable diplomatic forms, raised a great party against him, who, to say the least, would, under other circumstances, have remained neutral. They came forward to maintain the dignity of an administration, whose

\* M. Genet (sometimes written in the *Moniteur* Genest) was appointed, early in the Revolution, a *Chargé* to St. Petersburg; but the Empress refused to receive him. He then went to Holland, and was subsequently appointed to the United States. Sometime in the year '93, he appears to have been denounced at the society of "Jacobins" in Paris, for having embroiled (*brouillé*) his government "with Washington." No one will hesitate to accord to this minister a vigorous, acute and ready mind. Making a suitable allowance for the heat and taste of the times, much of his correspondence is composed with force and eloquence;—a similar expression of applause is, also, justly due to that of M. Adet, one of his successors. M. Genet, by the aid of his appearance, manners and cause, produced an extreme sensation in this country. Before the revolution he was first secretary to the board of interpreters in the department of foreign affairs.

duties were interpreted and even dictated by a foreign functionary—to preserve the country from a war, into which they were about to be involved without the consent and almost the knowledge of their own rulers. This state of things, also, brought out with zeal, activity and firmness all those men, who had been concerned in establishing the Federal Constitution. The work, so recently completed, was in jeopardy. Part of the danger arose from the steps taken by the French envoy; and it was unavoidable, but that a part of their opposition should be directed against him and his cause. A large portion of this party became opposed to the Revolution, urged by apprehensions for the constitution. In truth, the reaction, caused by M. Genet's intemperance and violence, was one of the circumstances that enabled the government to support, in a tolerably efficient manner, its system of neutrality. If he had conducted himself with the discretion and propriety of his successor, M. Fauchet, it is in some degree doubtful whether, with all the advantages derived from the personal character of the President and the talents of the Cabinet,\* the administration would not have been compelled to recede.

At the time of his appointment, Mr. Monroe† was in op-

\* Mr. Adams was then Vice President, and Mr. Jefferson and Mr. Hamilton were both in the Cabinet. The country has never seen a more powerful administration.

† Mr. Monroe was received and accredited in the bosom of the National Convention. The President was directed to give him the fraternal embrace, in token of the friendship that existed between France and America. "The Minister entered the hall amidst the cries of 'Vive la Republique;' and the President having announced, that Mr. Monroe spoke only the English language, one of the secretaries of the Convention was ordered to read a translation of the discourse the Minister had prepared."—*Moniteur*. The address of Mr. Monroe is plain, sensible, and appropriate to the occasion. But the answer of the President was rhetorical in the extreme, and concluded with this expression—"Why should I delay to confirm this friendship by the fraternal embrace I am directed to give you in the name of the French people. Come and receive it in the name of the American people, and may this scene destroy the last hope of the impious band of tyrants." "The

position to the administration, and, being in the Senate of the United States from Virginia, had taken an active part in resisting some of the principal measures of the cabinet, particularly the nomination of Mr. Gouverneur Morris to France, and of Mr. Jay to London. The appointment was, therefore, unexpected to him, but the manner, in which he conducted the negotiations of the country abroad, was not satisfactory to President Washington. We believe this is the only considerable nomination in our history of an individual, decidedly hostile to the administration, and as there was, at that period, great party heat, the policy of the measure must be regarded as exceedingly doubtful. We do not mean, as it relates to the interest of either party, but solely in reference to the political system of the administration. A citizen, publicly and resolutely opposed to every measure of a Cabinet, is still employed by that Cabinet in important and confidential business! peculiar and strong circumstances must, indeed, exist to make such an appointment either judicious, necessary, or salutary. In this particular instance the experiment failed. And even before Mr. Monroe left the country, the instructions of the Secretary of State furnish all the proof possible, that this envoy extraordinary and minister plenipotentiary, despatched, to say the least, upon the second most important mission in the gift of the government, did not even possess the confidence of that government. Other instructions sent to him, while abroad, also, show that he never succeeded in securing that confidence. And, at last, he was recalled with the displeasure of the administration. In the peculiar state of parties and of the country at the time, the Cabinet appears to have committed an error in recommending this appointment, though it was made for the sake of rendering an acceptable service to the French government, displeased with the conduct of Mr. Morris.\*

Minister was conducted to the President, who gave the kiss and embrace in the midst of universal acclamations of joy, delight, and admiration."—*Moniteur* year 2, No. 329.

\* The following is part of an instruction to Mr. Monroe, from the

The mission of Mr. Jay to England caused great uneasiness in France, in which Mr. Monroe fully participated, having, himself, no special instructions on that head, and the only information, with which he was intrusted by the government, leading him to suppose that the object of the embassy was not of much consequence, and could not disturb the relations of this country with France, though, at that time, by no means, of the most settled or friendly description. But the reports, that reached Paris, were of a different character, and at variance with the representations of the

Secretary of State, dated Philadelphia, June 1794,—the turn of expression of the first paragraph is somewhat peculiar. "You have been nominated as the successor of Mr. Gouverneur Morris, in the office of minister plenipotentiary of the United States of America to the Republic of France, from a confidence, that, while you keep steadily in view the necessity of rendering yourself acceptable to that government, you will maintain the self respect due to your own."—"We have pursued neutrality with faithfulness; we have paid more of our debt to France than was absolutely due, as the Secretary of the Treasury asserts, and we should have paid more if the state of our affairs did not require us to be prepared with funds for the possible event of war. We mean to continue the same line of conduct in future, and to remove all jealousy with respect to Mr. Jay's mission to London, you may say, that he is positively forbidden to weaken the engagements between this country and France. *It is not improbable, that you will be obliged to encounter on this head, suspicions of various kinds. But you may declare the motives of that mission to be, to obtain immediate compensation for our plundered property, and restitution of the posts.*

"Should you be interrogated about the Treaty of Commerce, you may reply that it has never been proposed to us by M. Fauchet. As to any thing else concerning it, you will express yourself not to be instructed, it being a subject to be negotiated with the Government here.

"In like manner, if a treaty of alliance, or if the execution of the guaranty of the French Islands by force of arms, should be proposed, you will refer the Republic of France to this side of the water. In short, it is expected, with a sure reliance on your discretion, that you will not commit the United States by any specific declaration, except where you are particularly instructed, and except, too, in giving testimony of our attachment to their cause."

American minister. His position was certainly an awkward, embarrassed one, and it was not a gracious proceeding to withhold from him the real purpose of Mr. Jay's mission, and at the same time, instruct him to make assurances to the Directory, which must have left an impression unfavourable to the American minister and his government. In January 1795, Mr. Monroe wrote in these terms to the Secretary of State :

"After my late communications to the committee of public safety, in which were exposed freely the objects of Mr. Jay's mission to England, and the real situation of the United States with Great Britain and Spain—I had reason to believe, that all apprehension on those points was done away, and that the utmost cordiality had now, likewise, taken place in that body towards us."—"I am sorry, however, to add that, latterly, this prospect has been clouded by accounts from England, that Mr. Jay had not only adjusted the points in controversy, but concluded a treaty of commerce with that government; some of these accounts state, that he had, also, concluded a treaty of alliance offensive and defensive. As I know the baneful effect, which these reports would produce, I deemed it my duty, by repeating, what I had said before of his powers, to use my utmost endeavours informally to discredit them."—"As I had just before received a letter from Mr. Jay, announcing that he had concluded a treaty, and which contained a declaration, that our previous treaties should not be affected by it, I thought it fit to make his letter the basis of my reply."

—"I cannot admit for a moment, that Mr. Jay has exceeded his powers, or that any thing has been done, which will give just cause of complaint to this Republic: I lament, however, that he has not thought himself at liberty to give me correct information in that respect, for, until it is known that their interest has not been wounded, the report will certainly keep alive suspicion, which always weakens the bonds of friendship. I trust, therefore, you will deem it expedient to advise me on this head, as soon as possible."

While harassed by a want of information, he received a short letter, dated London, Feb. 19, 1795, from Mr. Jay,



that did not remove a single difficulty, by which he was oppressed.

"On the 5th of the month, I had the honour of writing to you a letter, in answer to your's of the 17th ultimo, by Mr. Purviance, who is still here, waiting for an opportunity to return, and who will be the bearer of that letter."

"You will receive this by Colonel Trumbull, who, for some time past, has been waiting for an opportunity to go through Paris to Stutgard on private business of his own. He did me the favour to accompany me to this country as my secretary. He has been privy to the negotiation of the treaty between the United States and Great Britain, which I have signed, and having copied it, is perfectly acquainted with its contents. He is a gentleman of honour, understanding and accuracy, and able to give you satisfactory information relative to it. I have thought it more advisable to authorize and request him to give you this information personally, than to send you written extracts from the treaty, which might not be so satisfactory. But he is to give you this information in perfect confidence that you will not impart it to any person whatever, for, as the treaty is not yet ratified, and may not be finally concluded in its present form and tenor, the inconveniences, which a premature publication of its contents might produce, can only be obviated by secrecy. In the mean time, I think myself justifiable in giving you this information in question, because you are an American minister, and because it may not only be agreeable but perhaps useful."

In making some remarks on this letter and affair, Mr. Monroe observes,

"A few days after this, I was favoured with a letter from Mr. Hitchborne, an American gentleman of character here (from Massachusetts) of which I enclose you a copy, stating the contents or outlines of the treaty in question, as communicated to him by Colonel Trumbull, with a view that he might communicate the same to me for the information of this government. I was surprised at this incident, because I could not suppose that Colonel Trumbull would take this step, or any other without the instruction of Mr. Jay, and it seemed to me extraordinary, that Mr. Jay should give such an instruction, or mark to him such a line of con-

duct. I was not surprised that Colonel Trumbull should confide the purport of the treaty to Mr. Hitchborne, for he merited the confidence, but I was surprised that Mr. Jay should write me it was to be communicated to me only as a *public minister, &c., to be imparted to no one else*, and that Colonel Trumbull, however deeply impressed he might be, after his arrival here, with the propriety of removing the doubts of this government upon that point, should consider himself at liberty to communicate the same to a third person, to be communicated to me under no injunction whatever. I was, however, possessed of the paper in question, and it was my duty to turn it to the best account for the public interest, that circumstances would now admit of. It was, it is true, the most informal of all informal communications, and one, of course, upon which no official measure could be taken, yet the character of the parties entitled it to attention. Upon mature reflection, therefore, and the more especially, as I did not wish to meet the committee again on that point, until I heard from you, lest I should be questioned, why this new mode of diplomatic proceeding was adopted, I thought it best to send the paper in by my secretary, Mr. Gouvain (a young gentleman, who has acted with me since the provisional nomination of Mr. Skipwith to the consulate) instructing him to assure the members on my part, that they might confide in the credibility of the parties. The paper was presented to M. Merlin de Douay, with the comments suggested, and since which, I have neither heard from the committee, Colonel Trumbull or Mr. Jay on the subject."

M. Fauchet arrived in February '94, in this country. The consuls, having assumed admiralty powers, and having, in other respects, interfered with the exercise of the laws, the exequaturs of several were withdrawn. One of the most striking violations of the sovereignty of the country occurred in the case of M. Duplaine, vice consul of France at Boston. This individual, in August '93, assisted a party of armed men from the frigate, *La Concorde*, then lying in Boston harbour, to rescue a schooner, called the *Greyhound*, taken by a French privateer, from the hands of an officer of the United States' Court.\*

\* "George Washington, President of the United States of America,

M. Fauchet, instructed to renew the applications made by M. Genet, for an alliance, or a guaranty of the islands in the West India seas, or for aid in money, munitions and naval stores,—was principally engaged, during the short time he remained in the country, in remonstrating against the decisions of our courts, in relation to prizes taken by French privateers, or in soliciting the interposition of the executive. That part of the constitution, which separates the executive from the judicial authority, could have been but little understood by the ministers, sent to America, by the European states, during the first years of the government, as it appears

to all whom it may concern:—The *Sieur Antoine Charbonnet Duplaine*, heretofore having produced to me his commission as Vice Consul for the Republic of France within the States of New Hampshire, Massachusetts, and Rhode Island, and having thereon received from me an exequatur, bearing date the 5th day of June 1793, recognising him as such, and declaring him free to exercise and enjoy such functions, powers and privileges as are allowed to vice consuls of the French Republic by the laws, treaties and conventions in that case made and provided; and the said *Sieur Duplaine* having, under colour of his said office, committed sundry encroachments and infractions on the laws of the land, and particularly having caused a vessel to be rescued with an armed force, out of the custody of an officer of justice, who had arrested the same by process from his court; and it being, therefore, no longer fit nor consistent with the respect and obedience due to the laws, that the said *Sieur Duplaine* should be permitted to continue in the exercise and enjoyment of the said functions, privileges and powers, these are, therefore, to declare, that I do no longer recognise the said *Antoine Charbonnet Duplaine*, as Vice Consul of the Republic of France in any part of these United States, nor permit him to exercise or enjoy any of the functions, powers, or privileges allowed to the Vice Consuls of that nation; and that I do, hereby, wholly revoke and annul the said exequatur, heretofore given, and do declare the same to be absolutely null and void from this day forward. In testimony whereof, I have caused these letters to be made patent, and the seal of the United States of America to be hereunto affixed.

“ Given under my hand, this            day of            in the year of our Lord 1793, and of the independence of the United States of America, the eighteenth.

“ GEORGE WASHINGTON.

“ By the President :—TH : JEFFERSON.”

to have been a general belief, that the executive was authorized to interpose, and set aside or direct the decisions of the courts. M. Fauchet made great complaints of the violation of our neutrality by British cruisers; and, in some instances, his complaints were well founded. British vessels did, undoubtedly, equip in our ports, and anchor, with their prizes, in our waters, particularly in Lynnhaven bay, and other parts of the Chesapeake. Foreigners, and our own citizens in some cases, armed vessels privately, for illegal purposes. But the reproaches uttered at this time against the government, and particularly the courts of law, are entirely groundless. Many intricate questions came before those tribunals; questions new to them, and embarrassed by the confusion often arising from the mixture of state and national sovereignty, and entering very deeply into a wide and obscure range of neutral and belligerent rights. It is, also, right to add, that some of the cases were not divested of all appearance of fraud and collusion. The just duties of a neutral nation were occasionally overlooked in the temptations, that an evasion of the laws offered; but the decisions of the courts were delivered with firmness, intelligence and impartiality. We can now judge of them, without any of the excitement or predilections of that day. Every principle of public law, then touched upon, has been confirmed by the whole practice of the government to the present hour. The administration, acting with vigour and independence, proclaimed, at an early period, the system by which its conduct would be regulated. Steady and faithful to its purposes and doctrines, if its neutrality was sometimes violated, it is only to be attributed to the impossibility of executing, with a feeble naval force, its laws, on a coast, so extensive, where deep and spacious bays, or inlets, afforded shelter to the vessels of the belligerents. The numerous and precise instructions issued to its officers, its frequent communications with the state executives, bear witness to the solicitude, with which it was animated to render a full measure of justice, according either to treaties or public law, to the different parties, engaged in the disastrous war of that period.

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The nation was young and unconfirmed ; it had achieved a great exploit in the separation from the mother country—so great indeed, that the necessity of further efforts, and even denials, was not at once apparent ; the second union was just effected,—but the creation of this government was, at first, rather known and felt in the intemperate reproaches and accusations of the two vast parties, that then mutilated and preyed upon it, than by any well defined and acknowledged power and authority it possessed, either abroad or within itself. The state authorities had existed from the foundation of the country ; they were the governments, in reality, declared free by the act of July '76, and acknowledged sovereign and independent by the peace of '83 ;—they still continued, perhaps, and with reason, more jealous of their rights, from the institution of another power in the midst of them. There was no navy, no military force ; and the government had most difficult laws to execute in most difficult times. It could not prevent every violation of them ; but it displayed, on all occasions, a fixed resolution to maintain the faith of treaties, the principles of public law, and the dignity of the people.

The correspondence of M. Fauchet with the government, though not free from some peculiarities in diplomatic intercourse, bears the impression of a more subdued, measured character, than that of his predecessor. It does not appear, that he undertook any justification of the acts or language of M. Genet ; nor are we aware that any explanations were offered by him, concerning the painful step, the administration were compelled to take, in relation to that individual.\* He

\* A great outrage was committed on the person of M. Fauchet, when about to leave the country. He had embarked on board a small vessel at New-York, for the purpose of going to Newport. This vessel, on her arrival in Newport harbour, was entered by an armed party from the Africa, a British man of war, then lying there ; and a forcible search made for M. Fauchet, and his papers. But, either having received intelligence that the jurisdiction of the country would be violated in his own person, or not choosing to trust himself so near a British armed vessel, he had taken the precaution to land at a small

was succeeded by M. Adet, who arrived in this country in the summer of '95. This minister was intrusted, by the committee of public safety, with a letter addressed to Congress; he also brought with him the colours of the French Republic, which he was instructed to present to the United States, as a return for those offered to the National Convention by Mr. Monroe. The circumstance of his having brought a despatch addressed to Congress, instead of the executive, the proper body, under the constitution, was a cause of offence and reproach with many. The letters, M. Fauchet presented, under similar circumstances, had been referred, by a resolution of each house, to the executive, with a request that they might be answered. These proceedings were known to the committee of public safety, and answers to them had been received. A second minister, appearing with a letter addressed to the legislative department, it was considered, not only as an expression of censure on the President, but as renewing an attempt, formerly practised, to produce jealousies between the branches of government;

port in the sound, with all his papers. No explanation having been made of this affair, either by the British Vice Consul, (who knowingly transmitted an insulting letter from the British captain to the governor of Rhode Island) or by Captain Howe, the commander of the *Africa*, the exequatur of the consul was withdrawn, and the vessel ordered to leave the waters of the United States.

M. Fauchet, on his return to France, published, in 1797, a pamphlet, with this title, "*Coup d'œil sur l'état actuel de nos rapports politiques avec les Etats Unis*," &c. It is, of course, a vindication of the measures of his own government, but written with moderation. He admits that M. Genet was indiscreet, and that the consuls exceeded the limits of consular power. He attributes the prepossessions of Washington against the French, to the death of the King, the persecution of his friend General la Fayette, and to the supposed confidential conferences of a M. Talon, an agent of Louis XVII., sent secretly to obtain aid for the royal government. We believe very little was ever heard of M. Talon; but, according to M. Fauchet, he has the merit of suggesting to the President the celebrated questions respecting neutrality, on which he requested the opinion of his cabinet. M. Fauchet, believed to be still living, was employed in many honourable stations by the imperial government.

and as in the nature of an appeal from the decisions of an administration, with which the National Convention were far from being satisfied. We do not regard it altogether in this light. The French government paid little attention to forms; great changes had suddenly taken place in that country; and their own business, at home, was transacted in a singular and confused manner. Their construction of government, it was easy enough to understand. It consisted of a legislature, called the National Convention, a body of a single branch; and a sort of executive, denominated the Committee of Public Safety. But the exact and respective authority and power of these two bodies could not be comprehended with the same facility. They were no where well defined; and the style of conducting public affairs, at that time, in France, did not admit either of much precision or regularity. The spirit of the age was against forms. The revolution, itself, had been principally directed against the artificial arrangements of society, and it had done little else than destroy them. Mr. Monroe, the American minister, was, of course, addressed to the Committee of Public Safety; but he was received in a full and public meeting of the National Convention, and the credentials of his office were delivered to the president of that body. We cannot, therefore, be surprised, if the French were neglectful of forms abroad, when thus indifferent to them at home. The American government was, moreover, a machine somewhat difficult to be comprehended, at the first blush, by a foreigner. The nice division of power into three parts must have confounded a Frenchman in those days, when the heated and ardent state of the public mind would, in his own country, have resolved them, with great rapidity, into one.

Although M. Adet did not abandon the original grounds of complaint—of violation of neutrality, and of predilection shown to Great Britain, by this country,—his attention was principally occupied with the treaty, just then concluded by Mr. Jay. The government had the uncommon courtesy to put into the hands of his predecessor a copy of this instrument, obviously not for the purpose of soliciting remarks on



it, but to present him with exact information concerning the state of the relations of America with England ; and as a very forcible illustration of the extreme anxiety felt by the administration to maintain the utmost cordiality and confidence with France. M. Fauchet, having immediately left the country, it fell to the duty of M. Adet to go into a discussion of those principles of Mr. Jay's treaty, that, in his opinion, affected the rights, secured to his nation by the treaty of '78. We have already said, that the National Convention was exceedingly mortified, in failing to induce the American administration, either to furnish them aid and supplies secretly, or to enter into an open alliance. But the provisions of the treaty of November '94, awakened a deep feeling of indignation, and, eventually, of resentment. When information of its ratification was received in France, the Executive Directory resolved to suspend the functions of the French minister in the United States, to despatch a special envoy with instructions to complain of the infractions of the treaty of alliance, and to express the deep displeasure of the republic at the conduct of the American government. From this harsh measure they were induced to recede by the representations of Mr. Monroe. But to that instrument may, immediately, be traced the unjust acts of the French government, that followed upon the ill success attending M. Adet's negotiation ; and the partial state of hostility that existed, a few months in 1799, between France and the United States. We shall give M. Adet's complaints in his own words.

" Let the annals of the French revolution be opened, let the minutes of that august sitting be seen, in which the National Convention received the minister of the United States into its bosom ; the addresses were not studied, they sprung from hearts full of affection for an allied people, they breathed the feelings which dictated them, and the American minister found himself in the midst of his friends. What joy did not the American flag inspire, when it waved, unfurled, in the French senate ? Tender tears trickled from each eye ; every one looked at it with amazement. There, said they, is the symbol of the independence of our American

brethren—behold there the pledge of their liberty! may victory always attend it—may it lead to glory none but a free and happy people. These words, which escaped from a thousand mouths, were the expression of the sentiments of a whole nation. Was not an American, to each Frenchman, another Frenchman? he was more—he was a friend, and that sacred name, amidst civil dissensions, was equally respected by all. What, then, was done by the government? It put in question, whether it should execute the treaties to receive the agents of the rebel and proscribed princes. It made an insidious proclamation of neutrality; by its chicaneries, it abandoned French privateers to its courts of justice. It eluded all the advances made by the republic, for renewing the treaties of commerce, upon a more favourable footing to both nations. It excused itself, on the most frivolous prettexts,—whilst it anticipated Great Britain, by soliciting a treaty, in which, prostituting its neutrality, it sacrificed France to her enemies,—or, rather, looked upon her as obliterated from the map of the world—it forgot the services she had rendered it, and threw aside the duty of gratitude, as if ingratitude was an official duty.

“Alas! time has not yet demolished the fortifications, with which the English roughened this country, nor those, the Americans raised for their defence; their half rounded summits still appear in every quarter, amidst plains, on the tops of mountains. The traveller need not search for the ditch which served to encompass them; it is still open under his feet. Scattered ruins of houses laid waste, which the fire had partly respected, in order to leave monuments of British fury, are still to be found. Alas! the soldiers, who fell under the sword of the Britons, are not yet reduced to dust—the labourer, in turning up his field, still draws from the bosom of the earth their whitened bones; while the ploughman, with tears of tenderness and gratitude, still recollects, that his fields, now covered with rich harvests, have been moistened with French blood. It was at this moment, their government made a treaty of amity with their ancient tyrant, the implacable enemy of their ancient ally. O! Americans, covered with noble scars! O! you, who have so often flown to death and to victory, with French soldiers! you, who know those generous sentiments which distinguish the true warrior! whose hearts have always vibrated with those of your companions in arms! consult them to-day, to

know what they experience; recollect, at the same time, that, if magnanimous souls with liveliness resent an affront, they also know how to forget one. Let your government return to itself; and you will still find, in Frenchmen, faithful friends, and generous allies."\*

Much of the correspondence of M. Adet is liable to the same objections, already made to that of M. Genet. It contained insinuations respecting the government, and appeals to the people entirely unjustifiable and misplaced in a foreign envoy. But an apology was found for it in the peculiar state of the times. The Directory were exceedingly dissatisfied with the treaty made with England; it precluded, for the present, the hope of an alliance with this country, and confirmed the system of neutrality adopted in 1793. The remonstrances of the French ministers, having had no effect on the government, the treaty having been duly ratified, and the necessary appropriations made to carry it into operation, France determined to show at once not only a serious mark of its displeasure, but to strike an unexpected blow upon our commerce. In July '96 they decreed that notice shall, without delay, be given "to all neutral or allied powers, that the Flag of the French Republic will treat neutral vessels either as to confiscation, as to searches or capture, in the same manner as they shall suffer the English to treat them." This decree was a manifest violation of the treaty of '78. The commerce of the country had already suffered exceedingly from the French since the commencement of the war; but it is not necessary to repeat here all the decrees, issued either in France or the West Indies, previous to the time Mr. Monroe left this country. The 16th article of the

\* We do not profess to be accountable for this translation. We publish the letter as we find it in the public papers of the year. The reader will perceive, that the warmth of the revolutionary style had not at all subsided, though the letter is not destitute of a certain description of eloquence. In all the correspondence and state papers of the American government, during the revolution of this country, there is scarcely to be found a figure of speech, much less an inflammatory expression. The Declaration of Independence, written in the meridian heat of the day, is a model of simplicity and gravity.

Treaty was alternately violated and respected in the course of the year '93 no less than five times.\*

\* 1793. Feb. 19. National Convention decreed that French colonies be opened to American vessels on the same terms as to national.—Vessels arriving from any part of the East Indies to unload in any port of the Republic.

May 9. Neutral vessels, laden with provisions, bound to an enemy's port, should be brought in.

May 23. This decree repealed as it respected American vessels.

May 28. Again enforced on certain conditions.

July 1. Again repealed as on the 23d of May.

July 27. Decree of May 9 again enforced.

1794. Nov. 18. Merchandise in neutral vessels, belonging to the enemy, liable to seizure, till French merchandise, similarly situated, shall be ex- apted.

1795. Jan. 3. Decree of November repealed.

1797. March 2. Enemy's property on board neutral vessels again liable to capture.

1798. Jan. 18. The cargo determined the character of the vessel. Vessels at sea, having merchandise from British ports, declared good prize. Vessels, having entered a British port, excluded from the French.

1799. Oct. 29. Every person, a native of a neutral state, or one in amity with France, holding a commission from the enemies of France, or serving on board their vessels, declared a pirate.

Nov. 14. Decree of Oct. 29 suspended.

This is a brief summary of the decrees promulgated by the French government from 1793 to 1799, to which we shall add the decrees of French agents in the W. Indies.

1797. Feb. 1. Neutrals bound to all islands in possession of English, or defended by emigrants, liable to capture.

Aug. 1. Horses declared contraband.

Nov. 27. Vessels, going to or coming from British ports, subject to capture.

The French ministry complained very much of the purchase of horses by the English for the West Indies. Horses are contraband of

Charles Cotesworth Pinckney, of South Carolina, was appointed in 1796 Minister Plenipotentiary to France. He arrived in that country in December of the same year, and delivered Mr. Monroe the following letter from the Secretary of State. "General Pinckney will be the bearer of this letter. He is to succeed you as the Minister Plenipotentiary of the U. States with the French Republic. The claims of the American merchants on the French Republic are of great extent, and they are waiting the issue of them, through the public agents, with much impatience. Mr. Pinckney is particularly charged to look into this business, in which the serious interests and, in some cases nearly the whole fortunes of our citizens, are involved." Mr. Pinckney was known to be attached to the system of the administration; and it was desirable their sentiments and wishes should be represented, at this period, with all the force and in the fullest relief possible. Mr. Monroe, who had been minister during the years '94, 5 and 6, on taking his leave of the Directory, was addressed in the following terms, by the President. "By presenting this day to the Directory your letters of recall, you offer a strange spectacle to Europe. France, rich in her freedom, surrounded by the train of her victories, and strong in the esteem of her allies, will not stoop to calculate the consequences of the condescension of the American government to her ancient tyrants. The French Republic expects, however, that the successors of Penn, Raleigh and *Columbus*, always proud of their liberty, will never forget that they owe it to France. They will weigh in their wisdom the magnanimous friendship of the French people with the crafty caresses of perfidious men, who meditate again to bring them under their former yoke. Assure the good people of America, Mr. Minister, that, like

war. But the laws of nations do not forbid the purchase of contrabands and their exportation from a neutral country. The only penalty attending the practice is their liability to capture. A great part of the trade was in contrabands. France had all the advantage of this traffic as well as the other belligerents. Horses were sent to the French, as well as the British West India Islands.

them, we adore liberty; that they will always possess our esteem, and find in the French people, that republican generosity which knows how to grant peace as well as to cause its sovereignty to be respected. As for you, Mr. Minister, you have combatted the principles; you have known the true interests of your country;—depart with our regret;—we restore in you a representative to America, and we preserve the remembrance of the citizen, whose personal qualities did honour to that title.” At his return in '97, Mr. Monroe published an account of his mission, to which we take this opportunity to refer the reader.\*

Mr. Pinckney was not received by the Directory. Very soon after his arrival in Paris, after, indeed, he had been presented in a private manner to the Minister of Foreign Affairs, notice was officially sent to Mr. Monroe, that the “Directory will not acknowledge nor receive another Minister Plenipotentiary from the United States till after the redress of the grievances demanded of the American government, and which the French Republic has a right to expect from it.” The American minister was, also, informed by M. Giraudet, chief secretary in the Department of Foreign Affairs, that the minister at the head of that department could have no direct official communication, as the Directory had determined not to acknowledge him. He signified to Mr. Pinckney at the same time, that there was a law, which forbid foreigners remaining in Paris without the permission of the Directory; and, as it was their intention not to grant this indulgence to Mr. Pinckney, the law would be suffered to have its operation; and that he would be under the necessity of quitting the territories of the Republic as well as Paris, though the time had not yet been designated by the Directory. M. Giraudet intimated, that a communication would probably be made to him on this head by the minis-

\* A view of the conduct of the Executive in the foreign affairs of the United States as connected with the mission to the French Republic in the years 1794, 5, 6, by James Monroe, Minister Plenipotentiary, &c.

ter of Police, as the business fell into the department of that officer. This affair, conducted in an unaccountable manner, could not be regarded with much complacency by the American envoy. The minister of foreign affairs was well acquainted with the capacity in which Mr. Pinckney came to France; nor could the Directory be ignorant of the public character with which he was invested, for his arrival had been officially notified to M. de la Croix. He had waited upon that gentleman by appointment with his predecessor Mr. Monroe, who had received his letters of recall, and on that occasion presented an official copy of his letters of credence to the minister, who promised to lay them before the Directory. Two days after this audience, M. de la Croix wrote to Mr. Monroe, and informed him, that he had laid before the Directory a copy both of the letters of recall and credence. The public character of Mr. Pinckney was, therefore, properly and fully known to the executive government of France. In this view of the subject he was entitled to the protection of the laws of nations, and whether he was received or not by the Directory, could not at all alter his official character. The Directory were not obliged to acknowledge him, or any other minister from the United States, but, when it was once ascertained that Mr. Pinckney was a public envoy of a foreign country, and not a simple stranger or traveller in France, he was far, indeed, from being a fit subject for the minister of police. That officer could have thrown him into prison, and his letters of credence, as a diplomatic envoy, would have availed him nothing, for the minister of police had nothing to do with papers of that description;—the Directory could have ordered (as they afterwards did) Mr. Pinckney to quit the territories of France;—that is a municipal authority, every government is fully competent to exercise. But, whether France was at war or at peace with the United States, they could not, without a gross violation of the laws of nations, have refused to the minister letters of safe conduct and passports, both to protect him in their country, and to enable him to leave it in safety. Public ministers or agents form a distinct class



from common travellers or strangers ;—they are protected by a different description of law ;—their persons are inviolate, and they can be punished only by their own governments. The necessity and advantages of intercourse among civilized nations have created this order of men in society, an exception to all the general rules that govern states.

The immediate, professed cause of irritation was the British Treaty, concluded by Mr. Jay, and, though the French may have had no special right to complain of that act, their angry and loud representations, in regard to the treaty of 1778, were, by no means, either without excuse or foundation. "In vain have British agents," said the minister of justice in April 1797, "surprised a people, to whose liberty we have given birth, into stipulations, contrary to their true interests, as well as our own. We shall know how to restore a proper equilibrium by just reprisals. As soon as the American government, restored to itself, and its true friends, and become just and reasonable, shall annul the extraordinary treaty, it entered into on the 19th Nov. 1794, with our implacable enemy, the French Republic will cease to avail itself of the dispositions of this treaty, and I pledge myself it will not be acted on in order to support unjust pretensions." The treaty was the pretence for the spoliations ; but the poverty of the French government and the rapacious spirits of its rulers cannot be altogether acquitted of some share in their iniquitous proceedings. We find in the correspondence of the period, allusion to a report that Talleyrand, who had shortly before returned from this country, had said, "America is not of greater consequence, nor ought to be treated with more respect than Genoa or Geneva."

Mr. Pinckney remained in Paris till the middle of February. He was not molested by the government, though he had no communications with them. Being in expectation of receiving instructions, he believed it to be his duty to remain at his post till he should be furnished with a formal order from the Directory to leave France. This proceeding shortly took place. In the beginning of February, accounts

of the amazing and unexpected success of General Bonaparte in Italy arrived in Paris; and the next day official notice was sent to Mr. Pinckney to quit the French territories.—“The Executive Directory has charged me to make known to you, that, not having obtained special permission to reside at Paris, you are amenable to the law, which obliges foreigners to quit the territory of the Republic. I had the honour of informing you, near two months ago, by the principal secretary of my department, of the intentions of the government in this respect. I cannot dispense with notifying them to you to day.\*

Receive, Sir, &c.

CH. DE LA CROIX.”

Mr. Pinckney left Paris with his family on the 5th, and arrived in Amsterdam on the 17th, of February. The history of this affair is unusual in diplomacy. The Directory contended originally that they had not received official notice of the arrival of the American minister—they referred him to the police as a *private individual*. The envoy, with great propriety and dignity, rejected this proposition. Subsequently, he was ordered by a special decree of the Directory to leave the French territory as a *public agent* of the United States, because the same course was not pursued in regard to other Americans; other citizens of that country, and there were at the time a great number in France, were suffered to remain in Paris. The conduct of the government in regard to Mr. Pinckney was not founded on any reprehensive behaviour of the minister;—he had done nothing obnoxious to censure; for every sort of official communication had been denied to him. He could not, therefore, be dismissed, nor his recall solicited, the usual modes of proceeding, where the demeanour of a foreign envoy is offensive. Mr. Pinckney remained two months in Paris, subject, at all times, to be removed by a *gens d’arme*

\* The Directory had previously (in May '97) instructed M. Adet to return to France, and to cease all communication with the American government. France had no minister in this country till after the Convention of 1800.

from his lodgings, and thrown into a prison ; and it was only another act of inconsistency, that this disposition was not made of him. The Directory refused to receive him ;—he was then ordered to leave France. This last measure does not admit of an explanation. They refused to receive him, because they could not consent to hold farther intercourse with the United States, till their alleged wrongs were redressed. This may or may not have been a sufficient and reasonable pretext according to the nature of the grievances. But the American government, never having admitted that the complaints were well founded, could of course, not acknowledge the validity of the reason. Mr. Pinckney was intrusted with a special mission, and the instructions, expressed in his letter of credence, were purposely made conciliatory and flattering to the French government—"to maintain that good understanding, which, from the commencement of the alliance, had subsisted between the two nations, and to efface unfavourable impressions, banish suspicions and restore that cordiality which was at once the evidence and pledge of a friendly union." We shall close the narrative of Mr. Pinckney's treatment in France with the following just remark of the President of the United States.

"As it is often necessary, that nations should treat for the mutual advantage of their affairs, and especially to accommodate and terminate differences, and as they can treat only by ministers, the right of embassy is well known and established by the law and usages of nations. The refusal on the part of France to receive our minister, is then the denial of a right, but the refusal to receive him until we have acceded to their demands, without discussion and without investigation, is to treat us neither as allies, nor as friends, nor as a sovereign state."

At this period all diplomatic intercourse was suspended between the two governments. America, sincerely desirous of a restoration of the former state of harmony and friendship with France, was not insensible to the indignity offered it in the person of its minister ; but it viewed that conduct

as the result of passion or misunderstanding. The administration determined to persevere in its endeavours to remove the erroneous impressions under which the Directory laboured. In June '97 a commission was issued under the seal of the United States, to Charles C. Pinckney, John Marshall of Virginia, and Elbridge Gerry\* of Massachusetts, "for the purpose of terminating all differences between the United States of America and the French republic, and of restoring and confirming perfect harmony and good understanding, and reestablishing a commercial and friendly intercourse between them." "You are placed" (Secretary of State to Pinckney, June 12,) "at the head of the mission, although to answer every reasonably to be expected contingency, the powers are several as well as joint." We subjoin, also, extracts from their instructions, which will render it unnecessary to trouble the reader with similar details in regard either to the previous or succeeding missions, all of which terminated in the Convention, that makes the title of this chapter.

"Although the reparation for losses, sustained by the citizens of the United States, in consequence of irregular or illegal captures, or condemnations, or forcible seizures, or detentions, is of very high importance, and is to be pressed with the greatest earnestness, yet it is not to be insisted on as an indispensable condition of the proposed treaty. You are not, however, to renounce those claims of our citizens, nor to stipulate that they be assumed by the United States, as a loan to the French government.

"In respect to the alterations of the commercial treaty with France in the two cases, which have been principal subjects of complaint on her part, viz. enemies' property in neutral ships, and the articles contraband of war; although France can have no right to claim the annulling of stipulations at the moment, when by both parties they were originally intended to operate, yet, if the French government presses for alterations, the President has no difficulty in substituting the principles of the law of nations, as stated in the 17th and 18th articles of our commercial treaty with Great Britain, to those of the 23d and 24th articles of our commercial treaty with

\* Francis Dana, Chief Justice of the same state, was originally nominated.

France; and in respect to provisions and other articles, not usually deemed contraband, you are to agree only on a temporary compromise, like that in the 18th article of the British treaty, and of the same duration. If, however, in order to satisfy France, now *she is at war*, we change the two important articles before mentioned, then the 14th article of the French treaty, which subjects the property of the neutral nation, found on board enemies' ships, to capture and condemnation, must of course be abolished.—Great Britain has often claimed a right, and practised upon it, to prohibit neutral nations carrying on a commerce with her enemies, which has not been allowed in time of peace. On this head, it will be desirable, to come to an explicit understanding with France, and, if possible, to obviate the claim by an express stipulation.

“Such extensive depredations have been committed on the commerce of neutrals, and especially of the United States, by the citizens of France, under pretence that her enemies (particularly Great Britain) have done the same things, it will be desirable to have it explicitly stipulated, that the conduct of an enemy towards a neutral power shall not authorize or excuse the other belligerent power in any departure from the law of nations, or the stipulations of the treaty: especially, that the vessels of the neutral nation shall never be captured, or detained, or their property confiscated, or injured, because bound to or from an enemy's port, except the case of a blockaded port, the entering into which may be prevented, according to the known rule of the law of nations. And it may be expedient to define a blockaded place or port to be one, actually invested by land, or naval forces or both, and that no *declaration* of a blockade shall have any effect without such actual investment.—As a substitute for the reciprocal guaranty may be proposed a mutual renunciation of the same territories and possessions, that were subjects of the guaranty, and renunciation in the sixth and eleventh articles of the treaty of alliance. Such a renunciation, on our part, would obviate the reason assigned in the instruction to M. Genet, before cited, of *future danger from the rapidly growing power of the United States*. But if France insists on the mutual guaranty, it will be necessary to aim at some modification of it. The existing engagement is of that kind, which, by writers on the law of nations, is called a general guaranty; of course the *casus foederis* can never occur except in a *defensive war*. The nature of

this obligation is understood to be, that when a war, *really and truly defensive*, exists, the engaging nation is bound to furnish an *effectual and adequate defence* in cooperation with the power attacked: whence it follows, that the nation *may* be required in some circumstances to bring forward its whole force.—On the part of the United States, instead of troops or ships of war, it will be convenient to stipulate for a moderate sum of money, or quantity of provisions, at the option of France. The provisions to be delivered at our own ports in any future *defensive* wars. The sum of money, or its value in provisions, ought not to exceed two hundred thousand dollars a year during any such wars. The reciprocal stipulation, on the part of France, may be to furnish annually the like sum of money, or an equivalent in military stores, and clothing for troops, at the option of the United States, to be delivered in the ports of France. Particular caution, however, must be used in discussing this subject, not to admit any claims on the ground of the guaranty in relation to the existing war, as we do not allow that the *casus fœderis* applies to it. And if the war should continue after your arrival in France, and the question of the guaranty should not be mentioned on her part, you may, yourselves, be silent on the subject, if you deem it most prudent.—The ports of the United States, being frequented by the vessels of different belligerent powers, it became necessary to regulate the times of their sailing. The President, therefore, adopted what was understood to be the received rule in Europe, and ordered, that after the sailing of a vessel of one of the belligerent powers, twenty-four hours should elapse before an armed vessel of the enemy of the former should set sail.—This rule has been duly respected by the armed vessels of France and Great Britain.

“On the supposition, that a treaty will be negotiated to alter and amend the treaties, which now exist between France and the United States, the following leading principles, to govern the negotiation, are subjoined.—That no aid be stipulated in favour of France during the present war. That no engagement be made inconsistent with the obligations of any prior treaty.—That no stipulation be made under colour of which tribunals can be established within our jurisdiction, or personal privileges claimed by French citizens, incompatible with the complete sovereignty and independence of the United States, in matters of policy, commerce and government.”

The commissioners arrived in Paris in the beginning of October '97; they immediately requested a meeting with the Minister of Foreign Affairs. On this occasion they were distinctly informed, that for the present they could not have a public audience with the Directory, though cards of hospitality were sent to them without delay, in a style suitable to their public character; an attention, that had been omitted in the case of Mr. Pinckney. No persons were appointed officially to treat with them, but a direct intercourse of a singular nature immediately took place by means of certain individuals, who appear in the public correspondence under the initials of W. X. Y. Z.\* It does not much signify whether this was an intrigue of Talleyrand for his own benefit, or an attempt of the Directory to obtain a loan of money. The substance of the negotiation, conducted in

\* Y was said to be a monsieur Bellamy. Hauteval, an interpreter, asserted, in a letter written to Talleyrand, that he was represented by Z. The French account of this affair, which we give on a following page, will be found in the *Moniteur* No. 261. for the year 6. The initials, W. X. Y. Z. were employed by the American Executive to represent, in the communication to Congress, the individuals, who had the conversations with, and made the offers to the envoys, as their names were disclosed to the executive confidentially. A lady, understood to be Madame de Villette, the celebrated Belle et Bonne of Voltaire, was also concerned in this transaction. These agents were not furnished with documents or certificates of their official character from the French government. And the Directory asserts that the envoys were certainly deceived, that it was an artifice of some foreigners, (for one of the commissioners said that, with the exception of Hauteval, the persons were all foreigners,) to get money, and, as to the lady, an intimation is given that that part of the affair was not much to the credit of the Americans. Hauteval, in his letter published on this occasion, (he was a translator in the office of the Minister of Foreign Relations,) states that Talleyrand openly asked Mr. Gerry for a loan of 15 or 16,000,000 florins on the ground that America was bound to assist France, inasmuch as France had assisted America. The proposition was declined by the envoy, as their instructions did not allow them to offer loans. It is, however, well known, that the names of these persons were communicated to Talleyrand at his desire, twice repeated, and no one ever heard that they had been punished.



this private manner, was, to demand a present of 222,000 dollars for the pockets of the Directory, and a loan for the government of 32,000,000 florins, in what were called Dutch inscriptions, at that time at 50 per cent discount. It was proposed that these inscriptions should be taken at their par value, under the expectation that when the war was finished, the credit of the Dutch would be good, and the full value of the debt paid. They also required, that parts of the President's message of May '97 should be softened or explained.\* The details of this singular proceeding will be found at great length in the correspondence of the commissioners under all their signatures; it was immediately published both in America and Europe. Having met with a French version of it, probably from the pen of Talleyrand himself, we shall introduce parts of it for the entertainment of the reader. The whole of this negotiation has quite a dramatic effect. The gravity and uniformity, that usually attend these transactions, are, in this case, disturbed by a variety of singular and amusing incidents, that, vexatious as they are, hardly seem out of keeping with the times, or persons, who, on the part of France, figured in the scene.

"The American and English papers have lately resounded with the publication of the most strange communications, which the envoys of the United States have thought it their duty to make to their government.

"It is, with respect to those envoys, a deplorable monument of credulity and contradictions, and with respect to that government, a provocation still more deplorable.

—"That government, indeed, after so many and such ridiculous efforts against the French republic, endeavours to organize corruption around it.

—"At length the United States, sensible only to the disagreeable consequences, which have resulted thereupon to themselves, appeared to wish a reconciliation.

"Three commissioners have been sent for that end to the French

\* M. Talleyrand and the French government afterwards disowned the whole of this affair.

republic, two of them, General Pinckney and Mr. Marshall, manifesting against France prejudices brought from America, or imbibed from the nature of the connexions, which they lost no time in forming here; and the third, Mr. Gerry, announcing more impartiality and manifesting himself more disposed to lend a favourable ear to every thing, which might reconcile the two republics.

“From this ill suited union, which disclosed dispositions not very conciliatory, there must needs result, and there has in fact resulted, a crooked and embarrassed career on the part of those commissioners, hence their constant aversion to do, what might reconcile their eagerness to write, what might disgust.

—“In the mean time, the envoys thought themselves bound to transmit to the President of the United States a very voluminous account of their negotiation. Of what, then, could this account be composed? It was necessary to fill it with the despicable manoeuvres of all the intriguers, who, seeing the commissioners, charged with the most important interests, secluding themselves from the government, with which they ought to treat, hastened to gather round them, and infatuated them with the idea of their credit, and the opinion of their importance. One of these intriguers appears to have grounded himself on some acquaintance, which, as a foreigner having a recommendation, he had succeeded in obtaining with the minister, another (and it is the one who is the most active) grounds himself solely upon the acquaintance, which he had with the first intriguer; for he declares that he does not even know the minister. Such, moreover, is the situation of the man, whoever he may be, who is placed at the head of this department, that he is obliged to receive and listen to many persons, who are far from having any share in his confidence, and he has no means of preventing the abuse they may make of his absence of the most insignificant visits, of which they may avail themselves, as suits their interests, with men of no experience.

“In the publication, which the American government has made of the report of its envoys, these persons, without being avowed, are designated each by a letter. The minister, impatient to know their names, demanded them with importunity and finally obtained the communication, which he immediately handed to the proper authority. It will be learned with pleasure that they are foreigners, and it will be readily believed, that they did justice to them-

selves by hastening to quit the territory of the Republic. One of these letters, Z. designates a Frenchman, who hastened to declare himself. The language, he held, is irreproachable. He is presented, as having sometimes served as interpreter; but it is clearly seen that he interpreted none but honourable propositions.

"As to the foreigners, who are seen figuring in this negotiation, it appears, that the object of their whole intrigue was, to obtain from the Americans a sum of 1,200,000 livres to be distributed for corrupt purposes.

"Hence begin and end all the bustle, all the conversations, all the proceedings, minutely detailed in the Report of the envoys.

"It will be forever inconceivable, that men, authorized to represent the United States near the French Republic, could have been for an instant deceived by manœuvres, so evidently counterfeit, and that there should exist a temptation to convert the error in this respect into bad faith.

"What! Three men are sent envoys from America to France, to negotiate there a reconciliation between the two Republics; embarrassed in a preliminary matter, they cannot, at once, confer with the minister as commissioners, but have a thousand ways of seeing him as individuals, either at his own house or elsewhere; and two of them constantly refuse all the facilities which are offered to them.

—"Here it is a lady, known to be connected with Mr. Pinckney, who holds with him the most innocent discourse, which has been repented to him from one end of France to the other;—*lend us (said she to him one day) money in our war, we lent it to you in your's*; and a conversation, thus simple, is taken up by Mr. Pinckney, who finds it necessary to write every thing, and to poison every thing;—it is, mysteriously, sent by him to his government, as if it had any relation to the clandestine propositions made by the intriguers;—thus minute is distrust! Thus is prejudice led astray in its reasonings! In this manner are the politics of some men a pest to social intercourse.

"There is one W., whom we have not succeeded in discovering, who introduces to General Pinckney one X., a very hasty fellow, who says he is charged with a message from the minister, who, being soon afterwards pressed to answer, whether he is personally known to him, is forced to say, no; but that he has the proposi-

tions, which he made from Y., who, he says, has connexions with the minister, and, nevertheless, when they want to intrust Y. with the negative answer to his proposition for the 1,200,000 livres, he declines being charged with it, and is compelled to avow, through a kind of shame, and at the risk of discrediting the part he was playing, that the proposition did not come from the directory, nor even from the minister, and that it came solely from him, Y., who was desirous of saving the envoys the mortification of the disavowals.

—"In one word, they flattered themselves with exciting indignation, instead of pity. They wish for war, and they wished that insulted France might declare it against a people, whose cause she defended, and that it might be restored by her to the arms of England.

"By that war, the British cabinet would gain an ally, who would labour for its interests, second its projects upon the French and Spanish colonies, and retard the moment of its humiliation: by that war too, the British government would accelerate the execution of a favourite plan of which it has never lost sight.

"It is known that, since it despaired of reuniting to the triple crown the States, whose independence it was obliged to acknowledge, it aspired, at least, to prejudice them in favour of limited monarchy; that it endeavoured to fortify by the similarity of constitutional forms, the habits, common to the English and American people, and that it took care to keep for a long time one of the sons of George III. in the vicinity of the United States. Can it then be true that, to the disgrace of the human mind, many citizens of the United States should be found, who are seriously reconciled to the English form of government? Can it then be true, that men, called by the public confidence to the head of the government of the United States, have written in favour of the British constitution, merely to prepare its adoption in their own country? Can it be true, that a thirst for honours, greediness of wealth, and a desire of perpetuating power have already ripened this conspiracy against liberty?"

An intercourse of the singular sort, already mentioned, was continued till the end of October, at which time the commissioners determined not to receive any more proposi-

tions from individuals, who bore no acknowledged authority to treat with them. The terms, also, they never could have accepted, for nothing in their instructions allowed them to offer a loan to the Directory. No official communication of any kind having been held with them since their arrival in Paris, although nearly six weeks had elapsed, they addressed a letter on the 11th of November to the Minister of Foreign Relations, from which the following is an extract :

“ Citizen Minister—The undersigned, envoys extraordinary and ministers plenipotentiary of the United States of America to the French republic, had the honour of announcing to you officially, on the sixth of October, their arrival at Paris, and of presenting to you, on the eighth, a copy of their letters of credence. Your declaration at that time, that a report on American affairs was then preparing, and would in a few days be laid before the Directory, whose decision thereon should without delay be made known, has hitherto imposed silence on them. For this communication they have waited with that anxious solicitude, which so interesting an event would not fail to excite, and with that respect, which is due to the government of France. They have not yet received it, and so much time has been permitted to elapse, so critical is the situation of many of their countrymen, and so embarrassing is that of the undersigned, both as it respects themselves, and the government they represent, that they can no longer dispense with the duty of soliciting your attention ‘o their mission.”

No answer was given to this letter ; but attempts were repeatedly made to engage the envoys in private and unofficial negotiations. They were promptly and decidedly declined. The disposition of the French government still continued unfavourable. The envoys remained in Paris, as private citizens, under the protection of a law extended to the natives of all countries, with whom France was at peace. The Directory had not acknowledged them in any shape, and, though copies of their full powers, and letters of credence, had been taken by the Minister of Foreign Affairs, they had never been accredited,—a situation in every way awkward, embarrassing and mortifying. Four months were passed in this manner. They had been of no service to

their country, and it was doubtful, whether a position, so exceedingly degrading, would be viewed with complacency by their own government. But the mortifications to which they submitted, ought not to be mentioned, hereafter, to their discredit; for they endured them from patriotic and praiseworthy motives. They were well aware that peace was most important to the American people and government—not only peace, but a solid and sincere friendship with France.

The Directory, the government during that period in France, was not impressed with a single feature of solidity or permanency, and there was nothing in its structure that promised to be more lasting than the forms, which had preceded it. They were all governments created for the exigencies of the moment, and they gave way as soon as the times required greater concentration of power. This had been the progress of the revolution. The Directory, with its council of 500, built out of the ruins of the National Convention, sunk before the more arbitrary and despotic form of the consular government. The 18th Brumaire, as it is now termed in history, overthrew the Directory, dispersed the remnants of all the other political institutions, which had existed in France since the abolition of royalty, and created the first permanent government, with which foreign nations could treat in safety and with confidence. The 18th Fructidor produced the Directory. But the 18th Brumaire introduced the consular fasces, and with them, as in old Rome, the imperial eagle. This last epoch laid the foundation, since the year '91, of the fifth constitution in France. The confusion and irregularity which prevailed, afforded a convincing proof that the French government possessed neither power at home nor consideration abroad. Their diplomatic relations were interrupted;—few of the old governments of Europe had acknowledged the Directory, and those that had done it, had been compelled to that step by the successes of the French armies. The revolution was truly in nearly as rapid a progress in '98 and '99 as in '89 and '90. The rulers for the moment, and foreign governments, were fully sensible of this juncture of affairs. The first were,

therefore, less indifferent to the means by which they obtained wealth or power;—they were not moved by feelings of respect for other states, nor inspired with notions of great and permanent policy;—they considered, very justly, their own condition extremely precarious, for the dismal experience of their predecessors, full of warnings, was fresh before their eyes. In the beginning of the revolution the most violent men prevailed; towards the end, the most corrupt. Rulers, who do not hope that their power, much less their system, will be prolonged, cannot be expected to enter deeply into the intricacies of foreign negotiations. The perpetual danger and vacillations of such a government destroy all interest, that men would naturally take in its success. A course of measures, exceedingly reprehensible, and requiring immediate explanation in other cases, would be passed over without attention in a country, where their most important domestic affairs were conducted in a confused and irregular manner, and where changes and revolutions were constantly dreaded. Nor can the foreign agent expect that the usual diplomatic forms will be observed towards him, when the persons at the head of affairs betray an absence of all the essential attributes of sovereignty. “I have, also, repeatedly called the minister’s attention to the obnoxious acts of the late assembly, and to their proposition of a new commercial treaty.” He has replied very candidly, that, for himself, he should be glad to settle every thing to my satisfaction, but that his ministerial existence is too precarious to undertake any extensive plan; that the attention of the government is turned too strongly towards itself to think of its exterior relations; and that the assembly, at open war with the executive, would certainly now reject whatever should be presented to them.”\* We do not make these remarks as a justification of the French government, for they were never at the trouble of, even, acknowledging the American ministers. But they will, in some sort, account for the great degree of patience and resolution, with which the envoys endured the

\* Extract from letter of Mr. Morris, July 10, 1792.



neglect of the Directory. They were, besides, intrusted with a special mission ; it was, therefore, their duty to remain till they were satisfied of the impossibility of accomplishing the objects for which they had been sent. We find them still at Paris in the beginning of the next year, so far, indeed, from having passed through the first steps of a negotiation, that the determination of not even receiving them, appeared more deeply fixed every day in the mind of the Directory.

Having done every thing that the great principles of the administration at home, and the special objects of their mission required from them in its fullest latitude, they resolved, towards the end of January '98, to address a final letter to the Minister of Foreign Relations. This letter, a very long one, examined, in an able manner, the whole unfortunate controversy that existed between the two governments, and concluded with these expressions :

“ Three citizens of the United States have been deputed, as envoys extraordinary and ministers plenipotentiary to the French republic. Their instructions authorize and direct them to review the existing treaties between the two nations, and to remove by all proper means the inequalities, which have grown out of the stipulations of those treaties, in consequence of the refusal of England to adopt the principles they contain. Bringing with them the temper of their government and country, searching only for the means of effecting the objects of their mission, they have permitted no personal considerations to influence their conduct, but have waited under circumstances, beyond measure embarrassing and unpleasant, with that respect the American government has so uniformly paid to that of France, for permission to lay before you, citizen minister, these important communications, with which they have been charged. Perceiving no probability of being allowed to enter in the usual forms on those discussions, which might tend to restore harmony between the two republics, they have deemed it most advisable, even under the circumstances of informality, which attend the measure, to address your government through you, this candid review of the conduct, and this true representation of the sentiments and wishes, of the government of the United States.

They pray that it may be received in the temper, with which it is written, and considered as an additional effort, growing out of a disposition, common to the government and people of America, to cultivate and restore, if it be possible, harmony between the two republics. If, citizen minister, there remains a hope that these desirable objects can be effected by any means, which the United States have authorized, the undersigned will still solicit, and will still respectfully attend the development of those means. If, on the contrary, no such hope remains, they have only to pray, that their return to their own country may be facilitated, and they will leave France with the deep felt regret, that neither the real and sincere friendship, which the government of the United States has so uniformly and unequivocally displayed for this great republic, nor its continued efforts to demonstrate the purity of its conduct and intentions, can protect its citizens, or preserve them from the calamities, which they have sought, by a just and upright conduct, to avert."

To this communication, M. de Talleyrand made an elaborate and detailed answer on the 18th of March following. He informed the commissioners he had laid their letter before the Directory, and it was by their instruction, that he at that time replied to it. In the course of the letter, he addressed them by the title of the *commissioners* and *envoys extraordinary* of the United States. We shall not recapitulate the facts or arguments of this communication, as they are but a repetition of the remarks and sentiments of the French ministers in America. But in it is disclosed, for the first time, an arrangement, which, we believe, is altogether novel in diplomacy. M. de Talleyrand declares plainly, that the Directory prefer to treat with one only of the envoys, as the opinions of the others preclude that mutual confidence, indispensable to negotiation. America, certainly, intrusted to these three commissioners, men, upon whose abilities and integrity she relied, the power, *jointly* or *severally*, to conclude a treaty with France. But she never intended to concede to a foreign government the right and privilege of selecting such of the envoys, as might be thought most proper for the purpose of conducting the negotiation. Nor can

it be considered, under any circumstances, very decorous to allude to the political sentiments of foreign ministers. Employed for the purpose of representing the views of a government, their own private opinions cannot well be brought into notice ; for, as ministers at a foreign court, they, in reality, possess no private character. They are the representatives of a nation, and to complain of the political sentiments of these men, is, in other words, to complain of the political sentiments of the nation itself. We shall now quote the expressions of M. de Talleyrand. The reader will observe, that they are not characterized by much regard, either for the American government, or its envoys :

“ It is finally wished to seize the first favourable occasion to consummate an intimate union with a power, (England) towards which a devotion and partiality is professed, which has long been the principle of the conduct of the Federal Government. The intentions, which the undersigned here attributes to the government of the United States, are so little disguised, that nothing seems to have been neglected at Philadelphia to manifest them to every eye. It is probably with this view that it was thought proper to send to the French republic, persons, whose opinions and connexions are too well known to hope from them dispositions, sincerely conciliatory. It is, therefore, only in order to smooth the way to discussion, that the undersigned has entered into the preceding explanations. It is with the same view, that he declares to the commissioners and envoys extraordinary, that notwithstanding the kind of prejudice, which has been entertained with respect to them, the Executive Directory is disposed to treat with that one of the three, whose opinions, presumed to be more impartial, promise, in the course of the explanations, more of that reciprocal confidence, which is indispensable.”

A proper and dignified reply, signed by all the commissioners, was made to this extraordinary intimation ; though it was, April 3, '98, followed by a communication, addressed to Mr. Gerry alone, in these words :—

“ I suppose, Sir, that Messrs. Pinckney and Marshall have thought it useful and proper, in consequence of the intimations given in the end of my note of the 28th Ventôse last, and the obstacle, which

their known opinions have interposed to the desired reconciliation, to quit the territory of the republic. On this supposition, I have the honour to point out to you the 5th or the 7th of this decade to resume our reciprocal communications upon the interests of the French republic and the United States of America."

The necessary passports and letters of safe conduct were shortly after sent to Mr. Marshall and Mr. Pinckney. The former gentleman embarked without delay for the United States; but Mr. Pinckney, on account of the alarming illness of his daughter, was permitted to remain a few months. This special and extraordinary mission here properly terminated. Although a joint or several power was bestowed on the commissioners, the interpretation they had put on their instructions forbade them to act separately. The object of the Directory could not be mistaken in omitting to send passports to Mr. Gerry; it was to detach him from his colleagues, and to induce him to enter into a separate negotiation. Whatever may be thought of the propriety of Mr. Gerry's remaining in France after the departure of the other members of the commission, or of his neglecting peremptorily to demand his passports, it appears that he did not take that step for the purpose of undertaking a discussion of the disputed topics, nor did he conceive that, separate from his colleagues, he was invested with any power to treat. We have his own words in support of this opinion, in answer to the letter of M. Talleyrand of April 3d, written the next day:—

"You have proposed, citizen minister, the 5th or 7th of this decade for me to resume (*reprendre*) our reciprocal communications upon the interests of the French republic and of the United States. The reciprocal communications, which we have had, were such only as I have alluded to in the beginning of this letter, unless your proposition, accompanied with an injunction of secrecy for me to treat separately, is considered in this light. To resume this subject will be unavailing, because the measure, for the reasons which I then urged, is utterly impracticable. I can only then confer informally and unaccredited on any subject respecting our mission and communicate to the government of the United States the

result of such conferences, being in my individual capacity unauthorized to give them an official stamp."

Mr. Gerry stated to the American government, that he did not leave Paris with his colleague, because the Minister of Foreign Relations had assured him, that event would be followed by an immediate declaration of war on the part of France. We are not aware that the certain occurrence of that state of things altered at all his position. The Commission had agreed that no one of the members could treat; nor any two withdraw while a possibility of negotiation remained. When Messrs. Pinckney and Marshall received their passports, Mr. Gerry informed the minister that he could not renew any discussions officially, for he was no longer a minister. And in a private letter to the President about this time, he complains very much of the situation in which he was placed, of having "brought himself into a predicament in order to support his (Mr. Adams') administration." Neither of the three ministers had ever been accredited;—two had been ordered to leave France, and the third declared, that the circumstance reduced him to the situation of a private person. We are at a loss, therefore, to conceive how the departure of the third envoy could have led to a declaration of war, particularly as Mr. Gerry did shortly after, on receiving the letter of recall of March 23, addressed to all the envoys, demand his passport and in the course of the summer, as soon, indeed, as he could get away, did actually leave France. If war had been declared, none of the blame of it could have been imputed to either of the envoys. France would have declared it upon her own responsibility, and after her treatment of Mr. Pinckney during his embassy in '96, and again, of the commissioners in '97 and 98, it seems unmeaning in her government to make this event depend upon a step entirely immaterial in every point of view. Mr. Gerry, himself, has made some just remarks on this subject in his letter of July 1st to M. Talleyrand:—

"It is inconceivable to me, that, *being without powers to negotiate,*

my return to the United States, after such long notice can be supposed in any degree to close the door to subsequent steps for a reconciliation. The door has always been, and still is open on the part of the government of the United States. It is impossible for any government to exceed it, in the moderation and justice of its measures towards France, or in its perseverance and patience to execute them; but it having failed in two attempts, will not France make one effort to obtain a reconciliation between the two republics? Consider the disagreeable predicament in which the government of the United States has been involuntarily placed, and it is conceived you cannot fail to see the propriety and policy of this measure."

M. de Talleyrand was at great pains to induce Mr. Gerry to remain; after the departure of the other commissioners he addressed several letters to him, soliciting him with uncommon eagerness to renew the discussions; an invitation which, we imagine, Mr. Gerry did not consider of a complimentary nature. In one of his last communications M. de Talleyrand writes, "I therefore urge you more pressingly than ever, while I refer to what I have already written on the subject, to postpone your departure and to attend quickly to the discussions, which I shall present. I will add that in the situation, in which you stand, it is contrary to all usage to depart without giving notice, that you have received an order to that effect. That the usage, on the contrary, is, when a doubt is raised as to the full power, for the envoy to wait the decision of his government." The American commissioner could not have been much pleased with this attempt to separate him from his colleagues, and to propose negotiations to one of the ministers, which had not only been denied to the whole commission, but had actually been withheld, till a majority of them were virtually expelled from the territories of the Republic.

A proposition on the fourth of February had been made, that Mr. Gerry should treat separately. This was declined. The envoy remained at Paris without an official character, waiting to receive the instructions of his government. He appears, to have been persuaded that the Directory in reali-

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ty were desirous of peace, and that in communications of an informal nature he should be able to arrange the outline of a treaty. This had originally been a part of one of the plans proposed to Talleyrand by the commission, but it was not at the time acceptable to the minister. In the beginning of May, Mr. Gerry received the letter of the Secretary of State of March 23d, addressed to the commissioners, directing them to apply for passports, unless certain conditions, specified in the letter, were complied with by the French government. Shortly after, he demanded his passport, but, notwithstanding repeated applications, both verbal and written, he did not succeed in leaving Paris till the latter part of July.

We know not how to explain the conduct of the Directory, unless, indeed, it entertained the expectation that the American people would assist it in demolishing the administration; an error very likely to arise where the freedom of the press is so unlimited, and where the popular voice is so constantly and forcibly expressed. Foreign nations have considered administrations at the last gasp, the union even in jeopardy, and one portion of the people claiming their aid as allies, when, in truth, it was only an exceedingly violent state of party feeling, vastly heightened by mutual recrimination. Parties have contended in this country with a warmth, often to be deplored, but these contentions have never had for their object the life of the confederacy. They turned entirely on the course of policy pursued by the administration of the day; and, as this policy was unavoidably much controlled by the measures of the two great belligerents, one of the parties was necessarily the advocates of the acts of a foreign government. This circumstance certainly deceived France at the time, of which we are now speaking, and at a subsequent period, Great Britain. Those governments mistook the parties that, at different epochs, vindicated their measures, as their allies in this country; though, in truth, they were but opponents of each other. The Directory, it is quite evident, calculated with confidence, not only upon a party in America, but upon an alliance with the American people. The reception of M. Genet and the re-



presentations of the French ministers would very easily have produced that expectation and belief. The enticing principles of their revolution gained as many victories as the brilliant valour of their armies;—in all the countries they marched to conquer, they found allies. And if there was a popular party (literally speaking) in Italy, in Germany, in the Low Countries, we cannot be surprized that the Directory should expect to find one in America. Most undoubtedly they would not have been disappointed in this expectation, if the American people had not always been accustomed to liberty, to a representative government, practically very free, and latterly to popular institutions, carried to an extreme limit. It has often been remarked that the aristocracy of England, (the great number of men of rank and property united with vigorous minds and a careful education) saved that country from the propagation of the revolutionary principles of France. The democracy of America had the same effect here. The first sensation produced by the revolution was a very alarming one, but the country soon recovered from the intoxication of the times. The chalice contained nothing, the people did not already possess, and this was perfectly obvious because the meaning and value of liberty were well understood. The imaginations of the citizens were not tainted or inflamed; for they had got to that state, where freedom and independence were not an affair either of romance or sentiment, but of daily use and practical application. The nation was, therefore, soon unavoidably thrown into the situation of a spectator of the struggles of other countries for freedom.\*

\* It cannot with truth be said, that the object of the Directory prevailed in this business. The administration was demolished, but we believe the French war had little to do with that event. Peace was made before the second canvass for the election of President, and the change of politics is to be attributed altogether to domestic causes. Parties were at that time settling themselves, and the crisis just then took place. We have said in the text that the division of parties was produced by the course of measures of the administration of the day. This remark may be misunderstood without a word of explanation.

The Directory were in the habit of ordering foreign ministers to quit the French territories, and of violating in their persons the necessary and well established usages of nations. Most of the governments of the continent of Europe found it necessary to submit to these indignities; for they feared their own people quite as much as the French armies. Reasoning from the same causes the Directory applied the same system to the United States;—they commenced it with Mr. Pinckney;—he was ordered to leave France. On ordinary occasions, this measure would have provoked a war or would have required explanations. Neither step was taken by America. The government viewed with a proper degree of indignation this outrage upon its dignity, but it was neither dismayed nor irritated. It desired peace, and very justly attributed the violence of the Directory to the peculiar juncture of affairs in France rather than to any settled animosity in the French people. Without delay, another special and extraordinary mission was appointed and sent to Paris. This mission was, also, ordered to leave the French territories. Thus in twelve months the Directory had twice suspended, in an intemperate and unusual manner, all diplomatic intercourse between France and the United States. Even if the prospect of peace had not been hopeless, enough had been done by America to accomplish that most desirable object. The government resolved then upon war, it is true, rather of a defensive than an offensive kind. They adopted various war measures, which we shall not recite, as they do not belong to *this work*. The treaty of '78 was declared no longer obligatory on the United States, though it may be well doubted whether one government has power to dissolve a contract

The true party line was drawn by the different modes, in which men construed the constitution. This is the original and only permanent distinction. European politics became mingled with this primitive division; and the most vehement party heat, we have yet witnessed, has appeared to have been struck out of the collision of opinions on that topic. But, we believe, that, in reality, the second President fell a sacrifice to the opinions, he gave evidence of holding, in regard to the *powers, literal or implied, of the constitution.*

of this description. This state of things lasted nearly a year, and several naval actions took place between the vessels of the two nations.\*

The Directory were not at all desirous of proceeding to the extremity of war. They did not believe the United States would have the firmness and resolution to break through the system of peace and neutrality, they had prescribed for themselves. They had never been in a state of hostility with any European nation, and it is remarkable, that the earliest friend of this country should have been its first enemy. But as soon as France had ascertained that America would not renew its endeavours at negotiation; on the contrary, that the country had adopted decided and positive measures, an indirect attempt was immediately made, by the Minister of Foreign Relations, to pacify the American government. M. Pichon, secretary of the French Legation, either by the direction of M. Talleyrand, or in the natural course of society, held several political conversations with Mr. Murray, at this time minister at the Hague, on the state of the two countries. He submitted to that gentleman's perusal, letters he had re-

\* The act, declaring the treaties with France no longer obligatory on the United States, was approved by President Adams, July 7, 1798. The only proper name to give to this proceeding is a declaration of war; in no other view is it possible to assign to it a definite meaning or purpose. The act is in these words: "Whereas the treaties concluded between the United States and France, have been repeatedly violated on the part of the French government, and the just claims of the United States for the reparation of injuries so committed, have been refused, and their attempts, to negotiate an amicable adjustment of all complaints between the two nations, have been repelled with indignity, and, whereas, under authority of the French government, there is yet pursued against the United States a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation,—Be it enacted, &c. That the United States are, of right, freed and exonerated from the stipulations of the treaties, and of the consular convention, heretofore concluded between the United States and France, and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States."

ceived from the minister, obviously written for the purpose of being shown, and intended to remove the impression, the American government justly entertained,—that the Directory were not solicitous to conciliate their good opinions. In a letter of Aug. 28, '98, M. Talleyrand says,

“What, therefore, is the cause of the misunderstanding, which, if France did not manifest herself more wise, would henceforth induce a violent rupture between the two republics? Neither incompatible interests, nor projects of aggrandizement, divide them. After all, distrust, alone, has done the whole. France, in fine, has a double motive, as a nation, and as a republic, not to expose to any hazard the present existence of the United States. Therefore, it never thought of making war against them, nor exciting civil commotions among them; and every contrary supposition, is an insult to common sense.” And, in a subsequent one, “You were right to assert, that, whatever plenipotentiary the government of the United States might send to France, in order to terminate the existing differences between the two countries, would be, undoubtedly received with the respect, due to the representative of a free, independent and powerful nation.”

This declaration was of the greatest importance, for if made in sincerity, it removed the only impediment to a renewal of the negotiation. Mr. Murray, having transmitted an account of these conversations, and a copy of the letters, to his government, the President, without delay, (March 1799) appointed, with the consent of the Senate, a second commission to proceed to France. It consisted, originally, of Oliver Ellsworth of Connecticut, Patrick Henry of Virginia, and William Vans Murray, then at the Hague. Mr. Henry declined, on account of ill health. As this is the only diplomatic office, to which this celebrated man was ever nominated, under the constitution, we shall insert the whole of the letter written by him, on the occasion :

“Sir,—Your favour, of the 25th ult., did not reach me till two days ago. I have been confined, for several weeks, by a severe indisposition, and am still so sick, as to be scarcely able to write this. My advanced age, and increasing debility, compel me to abandon every idea of serving my country, where the scene of

operation is far distant, and her interests call for incessant and long continued exertion. Conscious as I am of my inability to discharge the duties of envoy, &c. to France, to which, by the commission you send me, I am called, I herewith return it. I cannot, however, forbear expressing, on this occasion, the high sense I entertain of the honour done me, by the President and Senate, in the appointment: and I beg of you, sir, to present me to them in terms of the most dutiful regard; assuring them, that this mark of their confidence in me, at a crisis so eventful, is a very agreeable and flattering proof of their consideration towards me; and that nothing short of absolute necessity, could induce me to withhold my little aid from an administration, whose abilities, patriotism and virtue, deserve the gratitude and reverence of all their fellow citizens."

Mr. Davie of North Carolina was subsequently appointed. Mr. Murray was directed to give notice of this pacific proceeding to the Minister of Foreign Relations, and to assure him that Messrs. Ellsworth and Davie would "not embark for Europe until they shall have received from the Executive Directory direct and unequivocal assurances, signified by their Secretary of Foreign Relations, that the envoys shall be received in character to an audience of the Directory, and that they shall enjoy all the prerogatives, attached to that character by the law of nations; and that a minister or ministers of equal powers shall be appointed and commissioned to treat with them." This appears to have been very welcome news to the Directory;—they did not delay to give the assurance required.

"The Executive Directory, being informed of the nomination of Mr. Oliver Ellsworth, of Mr. Patrick Henry, and of yourself, as Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French republic, to discuss and terminate all differences which subsist between the two countries, sees with pleasure that its perseverance in pacific sentiments has kept open the way to an approaching reconciliation. It has a long time ago manifested its intentions with respect to this subject. Be pleased to transmit to your colleagues, and accept yourself the frank and explicit assurance that it will receive the envoys of the United States in the official character, with which they are invested, and that they

shall enjoy all the prerogatives, which are attached to it by the law of nations, and that one or more ministers shall be duly authorized to treat with them."

The commissioners accordingly sailed for France. The nomination of this second commission was exceedingly opposed by a portion of the citizens. They considered that France had grievously insulted this country, and they were not disposed to renew, by their own gratuitous act, negotiations, which had formerly not only been unsuccessful, but were attended with many irritating and provoking circumstances. A belief was, also, entertained that the Bourbons would be restored. The coalition, then formed for that purpose, or rather for the overthrow of the revolution government, had commenced with appearances of ultimate success, particularly in Italy, where Suwarrow had gained great victories; and it was not regarded as a judicious measure to send an extraordinary mission to a government, apparently on the edge of destruction.

But none of these predictions or expectations were accomplished. The last coalition of that century was more certainly and fatally annihilated than any other had been; and France not only appeared, but was in reality, more formidable than at any previous period of the revolution. In the mean time, a great change had taken place in the government of that country, (the last the world was destined to see before the restoration of the Bourbons) the Directory being overthrown in November '99, and the consular government established. This was, in reality, the commencement of the reign of Napoleon Bonaparte.

The envoys, discouraged by the war in Europe from sailing direct for a port in France, landed at Corunna, in Portugal, and, by letters from that place, requested passports might be sent them, furnishing the necessary facilities to proceed on their journey. An answer was returned immediately, and with great politeness, by the Minister of Exterior Relations:

"I have received the letter, you did me the honour to write me from Corunna. I regret exceedingly that a tedious and painful

voyage should have so long retarded your arrival in France; you are expected with impatience, you shall be received with eagerness."

On their arrival at Paris, Joseph Bonaparte, C. P. C. Fleurieu and Roederer, were appointed to conduct the negotiation with them.

"On the 8th of March, agreeably to the notification, we had in the mean time received, we attended and had an audience of the Premier Consul at the Palace of the Thuilleries, and delivered to him our letters of credence. We were received with the respect, due to the character, which we had the honour to bear. The audience was a public one, and was attended by the two other Consuls, the Ministers of the Government, Members of the Council of State, General Officers, and the Ministers of Foreign Powers. After the compliments, usual on such occasions, had passed, M. Talleyrand informed us, that a commission of three Ministers Plenipotentiary had been appointed to negotiate with us, and that we should receive a note from him officially notifying us of that appointment, which we accordingly received in the evening of the same day."

These agreeable and auspicious appearances produced little effect on the progress of the discussion, so much so that in May, the Envoys wrote to the Secretary of State,— "our success is yet doubtful." They had then held many conferences with the French Plenipotentiaries, and the obstacles that apparently lay in the way, related to the provision of guaranty and indemnity for spoliations. In August the French Commissioners state, "They will propose, as a first basis, that the treaties, which united France and America, are not broken; that our war could not break them, but that the state of misunderstanding, which has existed for some time between the two countries, by the acts of some agents, rather than by the will of the government, has not been a state of war, at least, on the side of France. Thus the first proposition of the Ministers of France is to stipulate a full, and entire recognition of the treaties;"—or, as a second basis, "a new treaty, assuring equality of com-



mercial and all other favours without indemnity." These propositions reduced to a single sentence amount to this ;— France will pay for its spoliations by the guaranty. The negotiation was, therefore, after nine months duration, at a stand, because the United States would not acknowledge, they were under any obligation to observe the stipulation of the guaranty of the old treaty. In reply to these terms, the American Commissioners offered the same month the following sketch of a counter project :

" 1st. Let it be declared that the former treaties are renewed and confirmed, and shall have the same effect, as if no misunderstanding between the two powers had intervened, except so far as they are abrogated by the present treaty.

" 2d. It shall be optional with either party to pay to the other, within seven years, 3,000,000 of francs in money, or securities, which may be issued for indemnities, and, thereby, to reduce the rights of the other as to privateers and prizes to those of the most favoured nation. And during the said term allowed for option, the right of both parties shall be limited by the line of the most favoured nation.

" 3d. The mutual guaranty in the treaty of alliance shall be so specified and limited, that its future obligation shall be on the part of France, when the United States shall be attacked, to furnish and deliver at her own ports, military stores to the amount of 1,000,000 of francs, and on the part of the United States, when the French possessions in America, in any future war, shall be attacked, to furnish and deliver at their own ports a like amount in provisions.

" It shall, moreover, be optional for either party to exonerate itself wholly from its obligation, by paying to the other, within seven years, a gross sum of 5,000,000 of francs in money, or such securities as may be issued for indemnities.

" 4th. The articles of commerce and navigation, except the 17th article of the treaty, shall admit of modifications, reserving for their principle the rights of the most favoured nation, where it shall not be otherwise agreed, and be limited in their duration to twelve years."

An ineffectual and tedious discussion was terminated by the convention signed on the 30th of September.

"This will go by my colleagues, Mr. Ellsworth and Mr. Davie, who probably will leave Paris in two days. They will inform you of the whole history of the negotiation, which terminated last night in the signature of a provisional treaty of amity and commerce. We are all profoundly convinced that, considering the relations of the two countries politically, the nature of our demands, the present state of France, and the state of things in Europe, it was for our duty and for the honour and interest of the government and people of the United States, that we should agree to that treaty, rather than make none."\*

\* "ART. 2. The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February 1778, the treaty of amity and commerce of the same date, and the convention of 14th of November 1788, nor upon the indemnities mutually due or claimed; the parties will negotiate further on these subjects at a convenient time, and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows :

"ART. 3. The public ships which have been taken on one part and the other, or which may be taken before the exchange of ratifications, shall be restored.

"ART. 4. Property captured, and not yet definitively condemned, or which may be captured before the exchange of ratifications (contraband goods destined to an enemy's port excepted) shall be mutually restored. This article shall take effect from the date of the signature of the present convention. And if, from the date of the said signature, any property shall be condemned contrary to the intent of the said convention, before the knowledge of this stipulation shall be obtained, the property so condemned shall without delay be restored or paid for.

"ART. 5. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two states. But this clause shall not extend to indemnities claimed on account of captures or confiscations.

"ART. 6. Commerce between the parties shall be free. The vessels of the two nations and their privateers, as well as their prizes,

This convention was ratified, with an exception, by the United States, February 18th, 1801, and the ratification accepted by the First Consul July 31, 1801. This excep-

shall be treated in their respective ports as those of the nation the most favoured; and, in general, the two parties shall enjoy in the ports of each other, in regard to commerce and navigation, the privileges of the most favoured nation.

"ART. 7. Citizens of each country, to enjoy in that of the other the rights of devise, donation, and of inheritance, &c. without naturalization.

"ART. 8. In case of war between the parties, six months allowed for removing property, &c.

"ART. 9. Debts, &c. not to be sequestered nor confiscated in the event of war.

"ART. 10. Commercial agents may be reciprocally appointed, to reside in the United States and in France. Commercial agents not to exercise their functions until they are recognised by government.

"ART. 11. The citizens of the United States and France, to pay reciprocally, no higher duties than nations the most favoured.

"ART. 12. It shall be lawful for the citizens of either country to sail with their ships and merchandise (contraband goods always excepted) from any port whatever, to any port of the enemy of the other, and to sail and trade with their ships and merchandise, with perfect security and liberty, from the countries, ports and places of those who are enemies of both or of either party, without any opposition or disturbance whatsoever, and to pass not only directly from the places and ports of the enemy aforementioned, to neutral ports and places, but also from one place belonging to an enemy, to another place belonging to an enemy, whether they be under the jurisdiction of the same power, or under the several; unless such ports or places shall be actually blockaded, besieged, or invested.

"And whereas it frequently happens, that vessels sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded, or invested, it is agreed, that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor any part of her cargo, if not contraband, be confiscated, unless, after notice of such blockade or investment, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either, that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her cargo, nor if found therein after

tion consisted in expunging the 2d article, and inserting the following :—"It is agreed that the present convention shall be in force for the term of eight years from the time of the

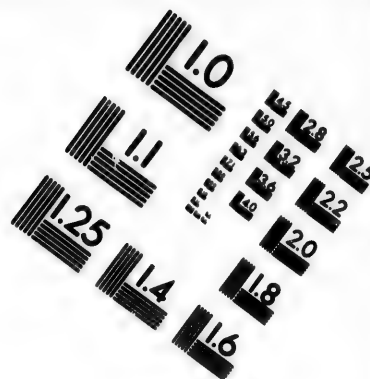
the reduction and surrender of such place, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

"ART. 13. In order to regulate what shall be deemed contraband of war, there shall be comprised under that denomination, gunpowder, saltpetre, petards, match, ball, bombs, grenades, carcasses, pikes, halberds, swords, belts, pistols, holsters, cavalry saddles and furniture, cannon, mortars, their carriages and beds, and generally all kinds of arms, ammunition of war, and instruments fit for the use of troops; all the above articles, whenever they are destined to the port of an enemy, are hereby declared to be contraband, and just objects of confiscation; but the vessel in which they are laden, and the residue of the cargo, shall be considered free, and not in any manner infected by the prohibited goods, whether belonging to the same or a different owner.

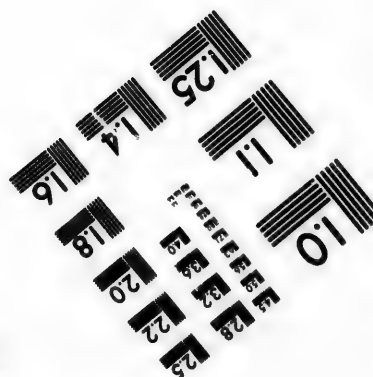
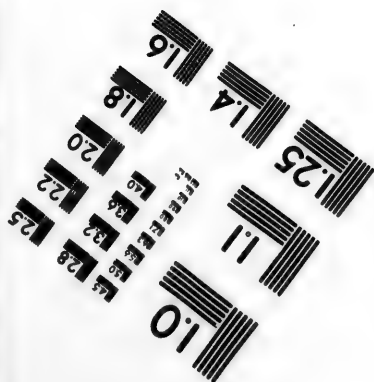
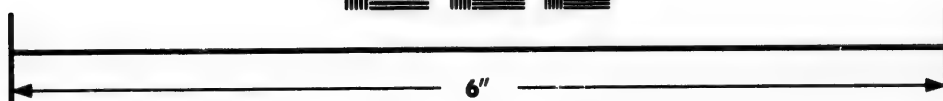
"ART. 14. It is hereby stipulated that free ships shall give a freedom to goods, and that every thing shall be deemed to be free and exempt which shall be found on board the ships belonging to the citizens of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to either party, they are not to be taken out of that free ship, unless they are soldiers, and in actual service of the enemy.

"ART. 15. On the contrary, it is agreed, that whatever shall be found to be laden by the citizens of either party on any ship belonging to the enemies of the other, or their citizens, shall be confiscated without distinction of goods, contraband or not contraband, in the same manner as if it belonged to the enemy, except such goods and merchandises as were put on board such ship before the declaration of war, or even after such declaration, if so be it were done without knowledge of such declaration; so that the goods of the citizens of either party, whether they be of the nature of such as are prohibited, or otherwise, which, as is aforesaid, were put on board any ship belonging to an enemy, before the war, or after the declaration of the same, without the knowledge of it, shall no ways be liable to confiscation, but shall well and truly be restored without delay to the proprie-





Resolution test chart showing patterns of vertical and horizontal lines with numerical values ranging from 1.0 to 2.5.



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exchange of the ratifications." The expunging this section removed one of the greatest embarrassments, to which the country was ever exposed,—we mean the mutual guaranty

tors demanding the same; but so as that if the said merchandises be contraband, it shall not be any ways lawful to carry them afterwards to any ports belonging to the enemy. The two contracting parties agree, that the term of two months being passed after the declaration of war, their respective citizens, from whatever part of the world they come, shall not plead the ignorance mentioned in this article.

"ART. 16. Merchant vessels to exhibit their passports and certificates.

"ART. 17. Merchant vessels to be provided, in time of war between one of the parties and a third power, with passports and certificates. Merchant vessels delivering up contraband articles, allowed to pursue their voyages.

"ART. 18. If the ships of the citizens of either of the parties shall be met with, either sailing along the coasts, or on the high seas, by any ship of war or privateer of the other; for the avoiding of any disorder, the said ships of war or privateers shall remain out of cannon shot, and may send their boats on board the merchant ship which they shall so meet with, and may enter her to the number of two or three men only, to whom the master or commander of such ship shall exhibit his passport concerning the property of the ship, made out according to the form prescribed in the fourth article. And it is expressly agreed that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting his papers, or for any other examination whatever.

"ART. 19. Merchant vessels under convoy, not to be visited.

"ART. 20. In all cases where vessels shall be captured or detained, under pretence of carrying to the enemy contraband goods, the captor shall give a receipt for such of the papers of the vessel as he shall retain, which receipt shall be annexed to a descriptive list of the said papers: and it shall be unlawful to break up or open the hatches, chests, trunks, casks, bales, or vessels, found on board, or remove the smallest part of the goods, unless the lading be brought on shore in presence of the competent officers, and an inventory be made by them of the said goods. Nor shall it be lawful to sell, exchange, or alienate the same in any manner, unless there shall have been lawful process, and the competent judge or judges shall have pronounced against such goods sentence of confiscation, saving always the ship and the other goods which it contains.

of the treaty of alliance. We have already said that Congress, in July '98, adopted a resolution, abrogating that instrument. We need not remark that the United States could not divest itself of obligations, termed in the civil law *symallagmatic*; for that instrument was a contract, which could be dissolved only by the consent of both parties, or by the act of war; but to neither of these ordeals had the treaty been subjected. Hostile measures had been adopted by the Executive, but they were measures only of defence;

"ART. 21. The master or supercargo of a captured vessel, not to be removed.

"ART. 24. When the ships of war of the two contracting parties, or those belonging to their citizens which are armed in war, shall be admitted to enter with their prizes the ports of either of the two parties, the said public or private ships, as well as their prizes, shall not be obliged to pay any duty either to the officers of the place, the judges, or any others; nor shall such prizes, when they come to and enter the ports of either party, be arrested or seized, nor shall the officers of the place make examination concerning the lawfulness of such prizes; but they may hoist sail at any time and depart and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to show. It is always understood that the stipulations of this article shall not extend beyond the privileges of the most favoured nation.

"ART. 25. It shall not be lawful for any foreign privateers who have commissions from any prince or state, in enmity with either nation, to fit their ships in the ports of either nation, to sell their prizes, or in any manner to exchange them; neither shall they be allowed to purchase provisions, except such as shall be necessary for their going to the next port of that prince or state, from which they have received their commissions.

"ART. 26. Pirates not to be received in the ports of either party.

"ART. 27. Neither party will intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds or may acquire on the coast of Newfoundland, in the gulf of St. Lawrence, or elsewhere, on the American coast, northward of the United States. But the whale and seal fisheries shall be free to both in every quarter of the world.

"This convention shall be ratified on both sides in due form, and the ratifications exchanged in the space of six months, or sooner if possible."

under the constitution, the President cannot declare a war. The French commissioners were, therefore, right in requiring that the treaty of '78 should be renewed, or modified, or abrogated by mutual consent. It could not be expected, they should acknowledge the validity of an act of the American Congress. On the other hand, the commissioners, unable to deviate from their instructions, or refuse obedience to the law we have just mentioned, considered the treaty no longer in existence. This circumstance gave rise to another difficulty. The parties could not agree upon the amount of indemnity, demanded by the United States for property, illegally taken, because the French plenipotentiaries could only consent to regulate this amount by the stipulations of the original treaty. In the 2d article, the question of indemnities was referred to a subsequent negotiation; and though the provisions of the treaties of '78 were modified by the convention, no opinion was expressed upon the claim of right. We have, already, said that the United States required that this article should be expunged. The article, in itself, was perfectly harmless as it respected the American government; for it did not contain a positive stipulation of any kind; but the government did not choose any doubt should remain of the firm resolution it had adopted, of never consenting to the renewal of the treaty of Paris. The first opportunity was taken of getting rid of a most embarrassing obligation, it was never in a condition to fulfil. We can, in this manner, account for the readiness with which the First Consul accepted the modification of the Senate. It is not a common proceeding in diplomacy; but, in reality, the guaranty had become altogether illusory. France could never expect to derive any benefit from it. But the First Consul coupled his acceptance of the modification with this condition: "provided that by this retrenchment the two states renounce the respective pretensions which are the object of the said article;" that is, the Americans renounced their claims for indemnities, and the French the fulfilment of the guaranty. The French government gave public notice in this manner, that they would hereafter pay no attention to the demands of

Americans for property, illegally taken by their cruisers previous to the treaty.

In negotiating this convention it was quite apparent throughout, that the French commissioners had little other object in view than to relieve themselves of all indemnities. France was exceedingly poor,—the active capital of the country had been wasted or squandered, and such was the unsettled state of public affairs, that men had been altogether deterred from embarking in those occupations and pursuits, that would have led to a renewal of wealth. Mr. Livingston, in a letter of March 1802, observes, "their expenses exceed their income, and the government is, at this moment, maintained by anticipations at an interest of from 12 to 18 per cent.

The period when this convention was matured, was, on the whole, auspicious for negotiation. Napoleon, at his first accession to the consulate, sought for peace with all the world. France truly needed it. She was exhausted by the bloody wars of Germany, Italy, and the low countries, and by the internal commotions of the Vendéans and Chouans. He proposed peace to England and to the enemies of France on the continent. But America was the only country with whom a treaty was definitively concluded.

We are not disposed to criticise with severity any portion of the negotiations with France from the first mission of Mr. Pinckney ;—on the contrary, the course of the administration, in the outset, admits of a full vindication : but we think there is no injustice in excluding from the benefit of this general praise the two acts that embrace the abrogation of the provision of guaranty, and the manner in which the convention of 1800 was concluded.\* The first proceeded from an exercise of authority, that could be assumed by this government only on one ground. That stipulation was undoubtedly the root of all the evil ;—every difficulty and embarrassment, experienced by the United States in the negotiations with

\* The appropriations for the convention of 1800 were passed by the House of Representatives unanimously.

France from April 1793, may be traced to it in a direct line, but in a legitimate sense it could only be torn out by the joint efforts, the mutual consent of the parties. The act of abrogation presented a fair ground to France for indemnity, and is only to be defended, or rather justified from considerations of rigid necessity and obvious self preservation. There appears, also, some degree of precipitancy in concluding the convention of 1800. More caution and reserve would probably have obtained better and more distinct terms, for after all, the substance of the treaty is contained in the provision under which the First Consul ratified it. To this it may be said in reply, it was extremely important for the United States to withdraw as speedily and as effectually as possible from European politics, then in the greatest fermentation, and that the same defence, which has been urged in the case of the London treaty of 1794, may well be brought forward on the present occasion;—it defined and secured the neutrality of the country. That argument is, we admit, always the most forcible that can be employed on any subject, relating to our diplomacy, but from the minute accounts we have now the advantage of possessing of the situation of France at that period, it is difficult to discern the least symptom, or indication, or desire on her part to force this country into a war;—and the three sets of commissions, successively issued by this government, with somewhat unusual haste and eagerness, could leave little doubt of the course we were disposed to follow. A nominal war had existed, and the convention put an end to it, but without securing a livre in the shape of indemnity for the spoliations, that, on our part, led to hostilities. The government assumed the right of abrogating the guaranty, and yet gave away the whole stipulation for the great amount of claims on France. The mischiefs, resulting from this proceeding, have been felt to this day;—and no opportunity for negotiation, so favourable, has since presented itself.

## CHAPTER IX.

## CESSION OF LOUISIANA.

*Purchase, a good one—Necessary for Western country—In '90 de Moustier made enquiries respecting Western country—French possessions in North America extinguished by treaties of '62 and '63—Louisiana secretly ceded to France—Great uneasiness in America—War with France—Coalition with England—France prepares to take possession of it—Prevented by renewal of war—Monroe sent to France—Important instructions—Details of negotiation—First price exorbitant—Ceded to United States—Terms—Made a "territory" and then a state—Letter of British officer on Louisiana.*

THE next treaty made with France was one, by which the important cession of Louisiana was accomplished. Time has already proved this measure to have been judicious on the part of the American government, and the purchase in every respect extremely cheap. The United States held, at the time, wide and broad possessions of fruitful soil and easy cultivation, far exceeding the wants of the population; and, novel and without precedent as was the spectacle of a youthful government, like America, entering into treaties with the ancient European states for the transfer of extensive tracts of country, it did not even appear, at first blush, a discreet arrangement to bring so great a quantity of excellent land into the market. But without a permanent unmolested entrance to the Gulf of Mexico, the territory west of the Alleghany, was despoiled of one half its value. The boundary of the Mississippi, and the free navigation of that river to its mouth, were, at the time of this treaty, indispensable to the proper independence and the full enjoyment of the great water communications of the western country.

The period of the discovery of the Mississippi, and the persons by whom the discovery was made, have been matters

of controversy. But we shall not enter into that subject. The country, now called Louisiana, originally belonged to France, but by a secret compact, concluded between France and Spain in 1762, and by the treaties of the following year between France, Spain and England, the French dominion was extinguished on all the continent of North America. And by the treaty between this country and England in 1783, the Mississippi became the western boundary of the United States from its source to the 31st degree of north latitude, and thence on the same parallel to the St. Mary's. We shall have occasion to speak more particularly of this boundary of the United States in treating of our foreign relations with Spain. A right of deposite at New Orleans for the produce of the west was secured by the treaty of '95 with Spain; but great obstacles being thrown in the way of the navigation, and a serious attempt made to bring about a separation of the western country, the stipulations of this instrument were not carried into effect for three years. Towards the close of the administration of Mr. Adams, measures even were adopted to take forcible possession of New Orleans, but the difficulties with Spain in that quarter having been for the time, overcome, the scheme was abandoned. Nevertheless, alarming uneasiness still existed in the west; the control of the Mississippi remained in foreign hands, and the extreme anxiety and apprehension, always manifested concerning the navigation of that river, were greatly augmented, when the article of the secret treaty of St. Ildefonso, ceding Louisiana to France, was known in the United States. This treaty was in reality, concluded in October 1800, but it was not promulgated till the beginning of 1802. The article of cession is in these words:

"His Catholic Majesty engages to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations above recited, relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it already has in the hands of Spain, and that it had when France possessed it, and such as it should be, after the treaties passed subsequently between Spain and other powers."



Every thing was to be apprehended from the activity and intelligence of the French in a country of such uncommon richness and resources. Speedily, we should have seen them closing the navigation of the Mississippi to the Americans, and securing the whole commerce of the Gulf of Mexico and the West Indies. These considerations, awakening great and just alarm in the United States, it appeared necessary to resort to force to prevent their entrance into Louisiana, and a disposition gradually developed itself to form an alliance with England. It is not probable that the government would ever have allowed France to take possession of Louisiana, although, from a union and comparison of various circumstances, the outlines of the scheme of the First Consul may be sketched with tolerable precision. An armament was, indeed, prepared in the French ports, officers were selected expressly for the expedition, and on the ratification of the treaty of Amiens of 1802, the secret article of the treaty of St. Ildefonso was immediately produced. Whether this enterprise was suggested by the recent crusade into Egypt, or by a recollection of the former power of France in this hemisphere, the operation was a magnificent one, and justly and emphatically belongs to the first class of profound, comprehensive plans. At peace with England, no impediment existed to the transportation of troops and every description of stores;—with the occupation of Louisiana, the conquest of St. Domingo, where the French, though in the outset altogether triumphant, now began to experience cruel reverses, would have followed; and ultimately the principal control of the commerce of the neighbouring seas. Louisiana originally formed part of the French dominions in North America, and traces of the solidity of their works, and of the enterprise and intelligence of that nation, now remain in that country, as, indeed, they do in most of those regions, from which they have been excluded by the Americans or the British. Before the disastrous peace of '63, France surpassed all the civilized people of Europe in the extent and value of her commerce, colonies and foreign possessions, and in her spirit of enterprise; but at that period began the down-

fall of one of the most enlightened and polished nations known in history.

It was, undoubtedly, in the plan of the French government to recover their ancient possessions in America, and to approach the Canadas by the valleys of the great rivers of the west, as they had undertaken to reconquer their settlements in the east by Egypt and the Red Sea. The danger, that threatened the western country at this period, cannot be disguised;—the First Consul held at his command the combined fleets of France and Spain, and for a few months in the fourteen years of his extraordinary reign, he was without an enemy on the ocean;—the United States were on the eve of a war with Spain, in consequence of that government having abrogated the right of warehouse at New Orleans. A French army, arriving in the Mississippi, would have landed not only on a neutral soil, but among its allies, inflamed with an unusual degree of animosity against the Americans, and eagerly seeking an opportunity, not only to revenge themselves, but to recover what they had lost. Without a question, France would have made an effort to regain all the territory west, at least, of the Ohio. It is true, the resources, both moral and physical, of the people, and the experience of the last war have now taught us to consider, as truly chimerical, projects to land on our coasts, or to penetrate into the interior settlements. But in 1802, Louisiana was a foreign country; its population was principally foreign, the western states were furnished with scanty means of defence or resistance, compared with their present situation, the successes of the French armies had acquired for them a formidable reputation, and none of those events had then taken place, which have since inspired the Americans with so much confidence in defending their native soil. We consider the situation of the country as exceedingly critical. England, dissatisfied with the hollow peace of Amiens, and preparing for another war with France, was striving to force us into an alliance with her, and a considerable portion of the people saw no safety, except in that step. Events had truly taken a singular turn. A few years before, the government, with the utmost difficulty escaped

an alliance with France and a war with England; so true it is, that the United States, immediately on the declaration of their independence, became subject to the caprices, influence and vicissitudes of European politics.

But, as in the year '94, the government again had recourse to negotiation;—America was neither prepared for war, nor even prepared to expect it;—in the midst of the general repose of Europe, the treaty of St. Ildefonso was boldly disclosed. “Peace, commerce, and honest friendship with all nations, entangling alliances with none,” had been declared by Mr. Jefferson, in his inaugural address of March 1801, to be one of the fundamental maxims of the state. From the foundation of the government in 1789, the administration had once been compelled in the extremity of indignity to depart from this policy, but an attitude, so decided, was not resolved on, till negotiation had become worse than hopeless. On the other hand, France, perceiving, she was again threatened with another war by her ancient and indefatigable rival, was not without apprehension that the United States would become a party to the fresh coalition, forming against her. Troops could no longer be transported in safety to Louisiana;—the cruelties of her armies in St. Domingo were dreadfully revenged; it had become necessary to abandon that island to its fate; and standing in need of money to provide for the attacks, with which she was either menacing England or Austria, no better arrangement remained than to cede Louisiana to the United States. This was the last attempt of any European nation to take permanent possession of any part of the continent of North America. From that time, France was occupied with her European wars, and though this government has been vexed and embarrassed by tedious and unsatisfactory negotiations with her, they have all emanated from commercial relations and difficulties.

As early as March 1802, we find an intimation from the government respecting the transfer of Louisiana;\* and in

\* It appears from a letter of Mr. Jefferson, of August 1790, when

May of the same year the following direct remarks from the Secretary of State to the minister in France :

"The cession of Louisiana to France, becomes daily more and more a source of painful apprehensions. Notwithstanding the treaty of March 1801, and notwithstanding the general belief in France on the subject, and the accounts from St. Domingo, that part of the armament sent to that Island, was eventually destined for Louisiana, a hope was still drawn from your early conversations with M. Talleyrand, that the French government did not mean to pursue the object. Since the receipt of your last communications, no hope remains but from the accumulating difficulties of going through with the undertaking, and from the conviction you may be able to impress, that it must have an instant and powerful effect in changing the relations between France and the United States."—"A mere neighbourhood could not be friendly to the harmony, which both countries have so much an interest in cherishing; but if a possession of the mouth of the Mississippi is to be added to other causes of discord, the worst events are to be apprehended. You will, consequently, spare no efforts, that will

Secretary of State, that France had, before this period, conceived the project of effecting a settlement on this continent.

"It is proper to apprise you of a circumstance, which may show the expediency of being, in some degree, on your guard, even in your communications to the Court of France—it is believed here that the Count de Moustier, during his residence with us, conceived a project of again engaging France in a colony upon our continent, and that he directed his views to some of the country on the Mississippi, and obtained and communicated a good deal of matter on the subject to his Court—he saw the immediate advantage of selling some yards of French cloths and silks to the inhabitants of New Orleans—but he did not take into account what it would cost France to nurse and protect a colony there, till it should be able to join its neighbours, or to stand by itself, and then what it would cost her to get rid of it. I hardly suspect that the Court of France could be seduced by so partial a view of the subject as was presented to them, and I suspect it less since the National Assembly has constitutionally excluded conquest from the objects of their government, it may be added too, that the place being ours, their yards of cloth and silk would be as freely sold, as if it were theirs."

consist with prudence and dignity, to lead the councils of France to proper views of this subject, and to an abandonment of her present purpose. You will, also, pursue by prudent means, the enquiry into the extent of the cession, particularly, whether it includes the Floridas, as well as New Orleans, and endeavour to ascertain the price at which these, if included in the cession, would be yielded to the United States. I cannot in the present state of things be more particular on this head than to observe, that in every view it would be a most precious acquisition, and that as far as the terms could be satisfied by charging on the acquisition itself, the restitution and other debts to American citizens, great liberality would, doubtless, be indulged by this government."

This was a period of extreme anxiety ; the reports from Europe were various, but all alarming. It was believed that France had made the acquisition of Louisiana prior to 1801, though the precise date could not be ascertained, nor the object that government had in view. Since the negotiations in Europe during the revolution war, the business of the cession of Louisiana was really the most important topic, that has occurred in our diplomatic history. And in that circumstance, we trust, we shall find an apology for introducing another extract from a despatch, written about this time, to the American Minister in Spain, May 11, 1802.

"We are still without a line from you since your arrival at Madrid, and feel an increasing solicitude to hear from you on the subject of Louisiana. The latest information from Paris has confirmed the fact, that it was ceded by a treaty, prior to that of March 1801, and notwithstanding the virtual denial of the cession in the early conversations between Mr. Livingston and the Minister of Foreign Relations, a refusal of any explanations, at present, seems to admit that the cession has taken place. Still, there are chances of obtaining a reversal of the transaction. The repugnance of the United States to it, is and will be pressed in a manner, that cannot be without some effect. It is known that most of the French statesmen, best informed on the subject, disapprove of it. The pecuniary difficulties of the French government must, also, be felt as a check : whilst the prospect of a protracted and expensive war in St. Domingo, must form a very powerful obstacle to the execu-

tion of the project. The councils of England appear to have been torpid on this occasion. Whether it proceed from an unwillingness to risk a fresh altercation with France, or from a hope that such a neighbourhood between France and the United States would lead to collisions, which might be turned to her advantage, is more than I can decide. The latter consideration might justly have great weight with her, but as her eyes may be more readily turned to the immediate and certain purposes, he answered to her rival, it is to be presumed, that the policy of England will contribute to thwart the acquisition. What the intentions of Spain may be, we wait to learn from you. Verbal information from inofficial sources has led us to infer, that she disowns the instrument of cession and will rigorously oppose it. Should the cession actually fail from this or any other cause, and Spain retain New Orleans and the Floridas, I repeat to you the wish of the President, that every effort and address be employed to obtain the arrangement, by which the territory on the east side of the Mississippi, including New Orleans, may be ceded to the United States, and Mississippi made a common boundary with the common use of its navigation for them and Spain. The inducements to be held out to Spain were intimated in your original instructions on this point. I am charged by the President now to add, that you may not only receive and transmit a proposition of guaranty of her territory beyond the Mississippi, as a condition of her ceding to the United States the territory including New Orleans on this side, but in case it be necessary, may make the proposition yourself, in the forms required by our constitution. You will infer from this enlargement of your authority, how much importance is attached to the object in question, a securing a precious acquisition to the United States, as well as a natural and quiet boundary with Spain, and will derive from this consideration additional motives to discharge, with a prudent zeal, the task committed to you."

The latter part of the year 1802 did not bring information at all satisfactory to the American government;—war or the settlement of the French peaceably in Louisiana were offered to our choice, and it did not much signify, which alternative was accepted. We had, already, found the Spaniards troublesome enough as neighbours, but with the English

in possession of the course of the northern lakes and of the St. Lawrence, and the French masters of the valleys of the great western rivers and of the outlets in the Gulph of Mexico, we should shortly have been despoiled of all the benefits of that neutrality, we were then honourably enjoying. The two most powerful as well as ambitious nations of Europe, entrenched upon our northern, western and southern frontier,—(and in the face of their numerous navies it could hardly be said, that even the Atlantic was open) and having pursued each other with a deadly hatred on all the continents of the old world, threatened to select, as their last field, the distant possessions of America, not those shores, first approached by Europeans, but the very heart and bowels of our country, penetrating, in a single campaign, with their armies and military array those remote and inland regions, to which, at the end of half a century, even, the astonishing and rapid progress of our own population had just reached. We should have seen great armies contending between the Pacific and Atlantic, with a desert on one side of them and a civilized nation on the other ;—as if wearied of desolating the ancient, rich fields,—of destroying the compact villages of Europe, they had chosen these extensive prairies on account of their solitude and remoteness. We should have seen, too, renewed, the scenes we had witnessed so often as colonies, and though now at liberty to select the foe, no other advantages would have fallen to our lot in the war. What benefit could a partition of the richest spoil confer, if the division took place on condition, that extensive territories on this continent should be left in the hands of a powerful nation. We should merely have been fighting to augment the resources, to sharpen the weapons of a state,—to render still more powerful a people, destined, perhaps, at an early period to become in its turn an enemy.

The administration watched with an anxious and vigilant eye the movements in Europe and in its own neighbourhood. The people, at large, were probably little aware of the danger with which they were menaced, and though any great portion of secrecy appears impossible in the operations of this



government, yet the whole business was managed with remarkable caution and discretion. It is far, indeed, from being imaginary, that the executive looked forward at that period to the contingency of a war. In May and April 1803, Mr. Madison, secretary of state, sent the following confidential and important communications to Messrs. Monroe and Livingston in Paris.

"If the French government, instead of friendly arrangements or views, should be found to meditate hostilities, or to have formed projects, which will constrain the United States to resort to hostilities, such communications are then to be held with the British government, as will sound its dispositions, and invite its concurrence in the war. Your own prudence will suggest, that the communications be so made, as, on one hand, not to precipitate France into hostile operations, and, on the other, not to lead Great Britain to form the supposition, that war depends on the choice of the United States, and that their choice of war will depend on her participation in it. If war is to be the result, it is manifestly desirable, that it be delayed until the certainty of this result can be known, and the legislative and other provisions can be made here: and, also, of great importance that the certainty should not be known to Great Britain, who might take advantage of the posture of things to press on the United States disagreeable conditions of her entering into the war.

"It will probably be most convenient in exchanging ideas with the British government to make use of its public minister at Paris as less likely to alarm and stimulate the French government, and to raise the pretensions of the British government, than the repairing of either of you to London, which might be viewed by both as a signal of rupture. The latter course, however, may possibly be rendered most eligible by the pressure of the crisis.

"Notwithstanding the just repugnance of this country to a coalition of any sort with the belligerent parties of Europe, the advantages to be derived from the cooperation of Great Britain in a war of the United States at this period against France and her allies, are too obvious and too important to be renounced. And, notwithstanding the apparent disinclination of the British councils to a renewal of hostilities with France, it will probably yield to the various motives, which will be felt, to have the United States in the

scale of Britain against France, and, particularly, for the immediate purpose of defeating a project of the latter, which has evidently created much solicitude in the British government.

"The price which she may attach to her cooperation cannot be foreseen, and therefore cannot be the subject of full and precise instructions. It may be expected that she will insist, at least, on a stipulation that neither of the parties shall make peace or truce without the consent of the other, and as such an article cannot be deemed unreasonable, and will secure us against the possibility of her being detached in the course of the war, by seducing overtures from France, it will not be proper to raise difficulties on that account. It may be useful, however, to draw from her a definition, as far as the case will admit, of the objects contemplated by her, that whenever, with ours they may be attainable by peace, she may be duly pressed to listen to it. Such an explanation will be the more reasonable, as the objects of the United States will be so fair and so well known.

"It is equally probable, that a stipulation of commercial advantages in the Mississippi beyond those secured by existing treaties, will be required. On this point it may be answered at once, that Great Britain shall enjoy a free trade with all the ports, to be acquired by the United States, on the terms, allowed to the most favoured nation in the ports, generally of the United States. If made an essential condition, you may admit that in the ports to be acquired within the Mississippi, the trade of her subjects shall be on the same footing for a term of about ten years with that of our own citizens. But the United States are not to be bound to the exclusion of the trade of any particular nation, or nations.

"Should a mutual guaranty of the existing possessions, or of the conquests to be made by the parties, be proposed, it must be explicitly rejected, as of no value to the United States, and as entangling them in the frequent wars of that nation with other powers, and very possibly in disputes with that nation itself.

"The anxiety, which Great Britain has shown to extend her domain to the Mississippi, the uncertain extent of her claims from north to south beyond the western limits of the United States, and the attention she had paid to the northwest coast of America, make it probable that she will connect, with a war on this occasion, a pretension to the acquisition of the country on the west side of the

Mississippi, understood to be ceded by Spain to France, or, at least, of that portion of it lying between that river and the Missouri. The evils involved in such an extension of her possessions in our neighbourhood and in such a hold on the Mississippi are obvious. The acquisition is the more objectionable, as it would be extremely displeasing to our western citizens, and as its evident bearing on South America might be expected to rouse all the jealousies of France and Spain, and to prolong the war, on which the event would depend. Should this pretension, therefore, be pressed, it must be resisted as altogether repugnant to the sentiments and sound policy of the United States. But it may be agreed in alleviation of any disappointment of Great Britain, that France shall not be allowed to retain or acquire any part of the territory, from which she, herself, would be precluded."—"It will only be observed to you, that if France should avow or evince a determination to deny to the United States the free navigation of the Mississippi, your consultations with Great Britain may be held on the ground, that war is inevitable. Should the navigation not be disputed, and the deposite alone be denied, it will be prudent to adapt your consultations to the possibility, that Congress may distinguish between the two cases, and make a question, how far the latter right may call for an instant resort to arms, or how far a procrastination of that remedy may be suggested and justified by the prospect of a more favourable conjecture.

The solicitude of England with respect to Louisiana is sufficiently evinced by her controlling the French expedition from Holland to that country. But her views have been particularly unfolded to Mr. King by Mr. Addington, who frankly told him, that in case a war should happen, it would perhaps be one of their first steps to occupy New Orleans, adding that it would not be to keep it, for that England would not accept the country were all agreed to give it to her, but to prevent another power from obtaining it, which, in his opinion, would be best effected by its belonging to the United States, and concluding with assurances, that nothing should be done injurious to their interests. If the councils of France should be guided by half the wisdom, which is here displayed on the part of her rival, your negotiations will be made very easy, and the result of them very satisfactory."

When France became oppressed with a want of money, and the war, renewed with England, precluded the possibility of executing her projects in the west, an individual was employed in this country to intimate to the American government, that the First Consul would, for the payment of a sum of money, consent to the transfer of a portion of Louisiana;—the sum was mentioned as well as the territory proposed for the cession. This communication, not in any way official, came from a quarter, sufficiently respectable, to attract attention, though, as Congress was not, at that time, in session, and the proposition involving the necessity of an appropriation, the Executive preferred to reserve the consideration of it for a more suitable season.

The arrangement was too advantageous to be neglected;—it promised, at once, to relieve the country from the extreme danger of a useless and costly war, and the continual and infinite inconvenience and injuries of troublesome, powerful and mischievous neighbours. But the acquisition of the whole of Louisiana was not included in the proposition, nor did it occur to the cabinet. Separate from a desire to prevent an expedition of the French, it was an important object (in the accomplishment of which the United States had been industriously engaged for many years) to secure the navigation of the Mississippi, and a settled boundary on the west toward the Spanish possessions. The original plan will be detailed in the instructions to Messrs. Monroe and Livingston, we shall presently quote. For the present, we have only to remark, that the President, early in 1803, determined to send a special commissioner to Paris to endeavour, in conjunction with the resident minister, to effect an arrangement in regard to Louisiana. The following extract from a letter, written in January of that year, will best explain the object and form of the commission.

“ Mr. Monroe will be the bearer of the instructions, under which you are jointly to negotiate. The object of them will be to procure a cession of New Orleans and Floridas to the United States, and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw

the French government into the measure, a sum of money will make part of our propositions, to which will be added such regulations of the commerce of that river and of others, entering the Gulf of Mexico, as ought to be satisfactory to France."—"I have thought it proper to communicate thus much to you, without waiting for the departure of Mr. Monroe, who will not be able to sail for two weeks, or perhaps more. I need not suggest to you, that in disclosing this diplomatic arrangement to the French government and preparing the way for the object of it, the utmost care is to be used in repressing extravagant anticipations of the terms to be offered by the United States, particularly of the sum of money to be thrown into the transaction. The ultimatum on this point will be settled before the departure of Mr. Monroe and will be communicated by him."—"For the present, I barely remark that a proposition made to Congress with shut doors is under consideration, which, if agreed to, will authorize a payment of about ten millions of livres under arrangements of time and place, that may be so convenient to the French government, as to invite a prompt as well as favourable decision in the case."

It is not difficult to understand the reasons, that induced the French government to part with Louisiana, but we believe the motives of the purchase from Spain have not been explained to this day. It does not seem likely, it should have been made with the intention of a future transfer to this or any other country. Napoleon Bonaparte did not give himself much trouble, or exercise much delicacy in regard to the demands of foreign governments;—and without at all knowing how much it cost him to procure the treaty of St. Ildefonso, we cannot believe that the just claims of American citizens had a great influence on his conduct in that transaction. If no one, in modern times, has surpassed, in profound political shrewdness and sagacity, the minister of foreign relations of the consular government, it, still, cannot be the slightest reproach to him to intimate, that it was, by no means probable, he should have foreseen the truce of Amiens, the almost immediate renewal of the war, and the entire impossibility for the French to carry into execution the splendid scheme they had formed in regard to Louisiana.

At any rate, this combination of events and circumstances, this juncture of affairs led to one of the most fortunate results possible for this country, and of which we happened to be in a situation to take an immediate and the fullest advantage.

We shall now recite at some length the important topics in the instructions to Messrs. Livingston and Monroe ;—they are long and numerous, but we should not have felt justified in abbreviating, much less in suppressing a state paper of this description.

“ March 2d. 1803.—You will, herewith, receive a commission and letters of credence, one of you as Minister Plenipotentiary, and the other as Minister Extraordinary and Plenipotentiary to treat with the government of the French republic on the subject of the Mississippi and the territories eastward thereof, and without the limits of the United States. The object in view is to procure, by just and satisfactory arrangements, a cession to the United States of New Orleans, and of West and East Florida, or as much thereof, as the actual proprietor can be prevailed on to part with.”—

“ Among the considerations, which have led the French government into the project of regaining from Spain the province of Louisiana, and which you may find it necessary to meet in your discussions, the following suggest themselves as highly probable :

“ 1st. A jealousy of the Atlantic States, as leaning to a coalition with Great Britain, not consistent with neutrality and amity towards France, and a belief, that by holding the key to the commerce of the Mississippi, she will be able to command the interests and attachments of the western portion of the United States, and, thereby, either control the Atlantic portion also, or, if that cannot be done, to seduce the former into a separate government, and a close alliance with herself. In each of these particulars, the calculation is founded in error.

“ It is not true that the Atlantic States lean towards any connexion with Great Britain, inconsistent with their amicable relations to France. Their dispositions and their interests equally prescribe to them amity and impartiality to both of those nations. If a departure from this simple and salutary line of policy should take place, the causes of it will be found in the unjust or unfriendly conduct, experienced from one or other of them. In general, it may be remarked, that there are as many points, on which the in-

terests and views of the United States and of Great Britain may not be thought to coincide, as can be discovered in relation to France. If less harmony and confidence should, therefore, prevail between France and the United States, than may be maintained between Great Britain and the United States, the difference will lie, not in the want of motives, drawn from the mutual advantage of the two nations, but in the want of favourable dispositions in the governments of one or other of them.

"The French government is not less mistaken, if it supposes that the western part of the United States can be withdrawn from their present union with the Atlantic part, into a separate government closely allied with France.

"Our western fellow citizens are bound to the union, not only by the ties of kindred and affection, which for a long time will derive strength from the stream of emigration, peopling that region, but by two considerations, which flow from clear and essential interests.

"One of these considerations is, the passage through the Atlantic ports of the foreign merchandise, consumed by the western inhabitants and the payments thence made to a treasury, in which they would lose their participation, by erecting a separate government. The bulky productions of the western country may continue to pass down the Mississippi, but the difficulties of the ascending navigation of that river, however free it may be made, will cause the imports for consumption to pass through the Atlantic States. This is the course through which they are now received, nor will the impost, to which they will be subject, change the course, even if the passage up the Mississippi should be duty free. It is true that mechanical and other improvements in the navigation of the Mississippi may lessen the labour and expense of ascending the stream, but it is not the least probable that savings of this sort will keep pace with the improvements in canals and roads by which the present cause of imports will be favoured.

"The other of these considerations results from the insecurity, to which the trade from the Mississippi would be exposed by such a revolution in the western part of the United States. A connexion of the western people, as a separate state with France, implies a connexion between the Atlantic States and Great Britain. It is found from long experience that France and Great Britain are



nearly half the time at war. The case would be the same with their allies. During nearly one half the time, therefore, the trade of the western country from the Mississippi would have no protection but that of France, and would suffer all the interruptions, which nations, having the command of the sea, could inflict on it.

"2d. The advancement of the commerce of France by an establishment on the Mississippi has, doubtless, great weight with the government, in espousing this project.

"The commerce through the Mississippi will consist, 1st, of that of the United States; 2d, of that of the adjacent territories to be acquired by France.

"The first is now, and must for ages, continue the principal commerce. The article, to be proposed to her on the part of the United States on that subject, promises every advantage she can desire. It is a fair calculation, that under the proposed arrangement her commercial opportunities would be extended rather than diminished, inasmuch as our present right of deposit gives her the same competitors, as she would then have, and the effect of the more rapid settlement of the western country, consequent on that arrangement, would proportionably augment the mass of commerce to be shared by her.

"The other portion of commerce, with the exception of the Island of New Orleans and the contiguous ports of West Florida, depends on the territory westward of the Mississippi. With respect to this portion, it will be little affected by the cession, desired by the United States. The footing proposed for her commerce on the shore to be ceded gives it every advantage she could reasonably wish during a period within which she will be able to provide every requisite establishment on the right shore, which according to the best information, possesses the same facilities for such establishments as are found on the Island of New Orleans itself.

"There remains to be considered the commerce of the ports in the Floridas. With respect to this branch the advantages, which will be secured to France by the proposed arrangement, ought to be satisfactory. She will here, also, derive a greater share from the increase, which will be given by a more rapid settlement of a fertile territory to the exports and imports through those ports, than she would obtain from any restrictive use she could make of those ports as her own property.

"With a view to permanent harmony between the two nations, a cession of the Floridas is particularly to be desired, as obviating serious controversies, that might otherwise grow even out of the regulations, however liberal in the opinion of France, which she may establish at the mouths of those rivers. One of the rivers, the Mobile, is said to be at present navigable for 400 miles above the 31° of latitude, and the navigation may no doubt be opened still further. On all of them the country within the boundary of the United States, though otherwise between that and the sea, is fertile. Settlements on it are beginning, and the people have already called on the government to procure the proper outlets to foreign markets.

"3d. A further object with France may be to form a colonial establishment, having a convenient relation to her West India Islands, and forming an independent source of supplies for them.

"The principles and outlines of the plan of cession are as follows, viz.

"1st. France cedes to the United States, forever, the territory, east of the river Mississippi, comprehending the two Floridas, the island of New Orleans and the islands lying to the north and east of the channel of the said river, which is commonly called the South Pass, together with all such other islands as appertain to either West or East Florida; France reserving to herself all her territory on the west side of the Mississippi.

"2d. The boundary between the territory, ceded and reserved by France, shall be a continuation of that already defined above the 31st degree of north latitude, viz., the middle of the channel or bed of the river, through the said South Pass to the sea. The navigation of the river Mississippi, in its whole breadth from its source to the ocean and in all its passages to and from the same, shall be equally free and common to citizens of the United States and of the French Republic.

"3d. The vessels and citizens of the French Republic may exercise commerce to and at such places on their respective shores below the said thirty-first degree of north latitude, as may be allowed for that use by the parties to their respective citizens and vessels. And it is agreed, that no other nation shall be allowed to exercise commerce to or at the same, or any other place on either shore below the said thirty-first degree of latitude for the term of

ten years, to be computed from the exchange of the ratifications hereof. The citizens, vessels and merchandises of the United States and of France shall be subject to no other duties on their respective shores below the said thirty-first degree of latitude, than are imposed on their own citizens, vessels and merchandises. No duty whatever, shall, after the expiration of ten years, be laid on articles, the growth or manufacture of the United States or of the ceded territories, exported through the Mississippi in French vessels, so long as such articles, so exported in vessels of the United States shall be exempt from duty: nor shall French vessels, exporting such articles ever afterwards be subject to pay a higher duty than vessels of the United States.

"4th. The citizens of France may, for the term of ten years deposit their effects at New Orleans and at such other places on the ceded shore of the Mississippi, as are allowed for the commerce of the United States, without paying any other duty than a fair price for the hire of stores.

"5th. In the ports and commerce of West and East Florida, France shall never be on a worse footing than the most favoured nation, and for the term of ten years her vessels and merchandise shall be subject therein to no higher duties than are paid by those of the United States. Articles of the growth and manufacture of the United States and of the ceded territory, exported in French vessels from any port in West or East Florida shall be exempt from duty as long as vessels of the United States shall enjoy this exemption.

"6th. The United States in consideration of the cession of territory made by this treaty shall pay to France — millions of livres tournois.

"7th. To incorporate the inhabitants of the hereby ceded territory with the citizens of the United States on an equal footing being a provision which cannot now be made, it is to be expected from the character and policy of the United States, that such incorporation will take place without unnecessary delay. In the mean time they shall be secure in their persons and property, and in the free enjoyment of their religion.

*Observations on the Plan.*

"1st. As the cession to be made by France, in this case, must rest on the cession made to her by Spain, it might be proper that

Spain should be a party to the transaction. The objections, however, to delay, require that nothing more be asked on our part, than either an exhibition and recital of the treaty between France and Spain, or an engagement on the part of France, that the accession of Spain will be given. Nor will it be advisable to insist, even on this much, if attended with difficulty or delay, unless there be ground to suppose, that Spain will contest the validity of the transaction.

"Article third is one whose import may be expected to undergo the severest scrutiny. The modification to be desired is, that whilst it provides for the interest of the United States it will be acceptable to France, and will give no just ground of complaint and the least of discontent to Great Britain.

"The present form of the article ought and probably will be satisfactory to France : First, because it secures to her all the commercial advantages in the river which she can well desire : Secondly, because it leaves her free to contest the mere navigation of the river by Great Britain without the consent of France.

"The article, also, in its present form, violates no right of Great Britain, nor can she reasonably expect of the United States, that they will contend beyond their obligation for her interest at the expense of their own. As far as Great Britain can claim the use of the river under her treaties with us, or by virtue of contiguous territory, the silence of the article on that subject leaves the claim unaffected. As far again, as she is entitled under the treaty of 1794, to the use of our bank of the Mississippi above the 31st degree of north latitude, her title will be equally entire.

"But although these reasons fully justify the article in its relation to Great Britain, it will be advisable, before it be proposed, to feel the pulse of the French government with respect to a stipulation, that each of the parties may, without the consent of the other, admit whomsoever it pleases to navigate the river, and trade with their respective shores on the same terms as in the other ports of France and the United States, and as far as the disposition of that government will concur to vary the proposition accordingly. It is not probable that this concurrence will be given : but the trial to obtain it will not only manifest a friendly regard to the wishes of Great Britain, and, if successful, furnish a future price for privileges within her grant, but as a just attention to the interests of

our western fellow citizens, whose commerce will not, otherwise, be on an equal footing with that of the Atlantic states.

"Should France not only refuse any such change in the article, but insist on a recognition of the right to exclude all nations, other than the United States, from navigating the Mississippi, it may be observed to her, that a positive stipulation to that effect might subject ~~us~~ to the charge of intermeddling with, and prejudging questions, existing merely between her and Great Britain; that the silence of the article is sufficient, that as Great Britain never asserted a claim on this subject against Spain, it is not to be presumed, that she will assert it against France on her taking the place of Spain; that, if the claim should be asserted, the treaties between the United States and Great Britain will have no connexion with it, the United States having in these treaties given their separate consent only to the use of the river by Great Britain, leaving her to seek whatever other consent may be necessary.

If, notwithstanding such expostulations as these, France shall inflexibly insist on an express recognition to the above effect, it will be better to acquiesce in it, than to lose the opportunity of fixing an arrangement, in other respects satisfactory, taking care to put the recognition into a form, not inconsistent with our treaties with Great Britain, or with an explanatory article, that may not improbably be desired by her."—"It is hoped that the idea of a guaranty of the country reserved to France may not be brought into the negotiation. Should France propose such a stipulation, it will be expedient to evade it, if possible, as more likely to be a source of disagreeable questions between the parties concerning the actual *casus fœderis*, than of real advantage to France. There will be less reason in the demand of such an article, as the United States would set little value on a guaranty of any part of their territory, and consequently there would be no just reciprocity in it. Should France, notwithstanding these considerations, make a guaranty an essential point, it will be better to accede to it, than to abandon the object of the negotiation, mitigating the evil, as much as possible, by requiring for the *casus fœderis* a great and manifest danger, threatened to the territory guaranteed, and by substituting for an indefinite succour, or even a definite succour, in military force a fixed sum of money payable at the Treasury of the United States."—"The instructions, thus far given, suppose that France

may be willing to cede to the United States the whole of the Island of New Orleans and both the Floridas. As she may be inclined to dispose of a part or parts, and of such only, it is proper for you to know, that the Floridas, together, are estimated at one fourth the value of the whole Island of New Orleans, and East Florida at half that of West Florida. In case of a partial cession, it is expected that the regulations of every other kind, so far as they are onerous to the United States, will be more favourably modified."

No one, after reading these instructions, can have any doubt of the extreme desire, felt by the United States, to obtain possession of some portion of Louisiana. The stipulations, the commissioners were allowed to yield would, if executed on the part of France, have given a very different colour to this business. The United States not only agreed to enter into a perpetual guaranty of French Louisiana, but to give to French vessels, in all the territory ceded to this country, the perpetual exercise of all the privileges, enjoyed by American vessels. We had just thrown off one contract of guaranty, an evil whose extent and duration it was not easy to calculate ;—it was brought about at a cheap rate and in a very expeditious way, and every one seemed to rejoice at it. Fortunately the country escaped a renewal of this mischievous engagement, attended with the certain, pernicious consequence of plunging us into the politics and wars of Europe. A guaranty of territory produces, at once, on the menace of war a *casus fœderis* ; immediately our neutrality and all the advantages of the remote situation of the country vanish,—a most injurious state of things, not only fatal to the interest, but in complete mockery of the loudly proclaimed policy of this nation. A war of this sort is accompanied with the worst effects for any people, for it neither depends upon them, either when war or peace shall be made. But the guaranty was not exacted.—Perhaps Napoleon thought it of little consequence from the way, the United States had already fulfilled one stipulation of that sort. The situation, in which he was placed, obviously made him think more of ready money than any distant ad-

vantages of an uncertain pledge. To his straitened circumstances we are indebted for a convention, that added the whole Province of Louisiana to the United States. The other stipulation, allowing perpetual commercial privileges to French vessels in the ports of the ceded territory, would have thrown the whole French trade from those ports forever into French hands, have disabled the United States from entering into a commercial treaty with any other nation on mutual and equal terms, and have placed, under the provisions of the Federal constitution, a decree of excommunication,—of interdiction and proscription upon all the inhabitants of the territory. The reader will not esteem these disadvantages of a slight character, or easily compensated for by any equivalents, a foreign nation could offer.

In touching briefly and lightly on this topic, we have not been impelled by the least disposition to throw the faintest shade over the brilliancy and utility of the project,—certainly none over the success and ability of the execution. All America now bears willing testimony to the wisdom of the scheme; but in reading the annals of our diplomacy, nothing has impressed itself more forcibly and constantly on our mind than the stern necessity of holding, forever separate and aloof, the civil and political concerns and institutions of this people, and those of every other state whatever. It has pleased Heaven to grant to this nation a peculiar form of government;—we cannot but believe for good purposes;—but it was never made for alliances, either of peace or war, and whenever it shall be forced, by the enterprize of rulers, however patriotic, the ambition of conquests, however just and necessary, out of its solitary, and independent but secure and solid channel, traces of weakness or mutilation will shortly appear.

Before the American commissioners had an opportunity of feeling the pulse of the French minister, a very great change had taken place in the views of his government. Secret causes, (and in diplomacy we are more apt to seek for deep, hidden motives of conduct than to rest satisfied with those, that lie on the surface, full in our sight) may have led to



this alteration of state policy, but for all purposes of history it is sufficient to advert to the situation of Europe at that period. The truce of Amiens had then lasted about ten months; but at the date of a despatch, we are about to quote from Mr. Livingston, the war, declared by England early in May, must have been fully foreseen.

"April 11, 1803.—M. Talleyrand asked me this day, when pressing the subject, whether we wished to have the whole of Louisiana. I told him no, that our wishes extended only to New Orleans and the Floridas, that the policy of France, however, should dictate.—He said, that if they gave New Orleans, the rest would be of little value, and that he would wish to know, '*what we would give for the whole.*' I told him it was a subject I had not thought upon, but I supposed we should not object to twenty millions, provided our citizens were paid. He told me this was too low an offer—that he would be glad, I would reflect upon it and tell him to-morrow. I told him that, as Mr. Monroe would be in town in two days, I would delay any further offer, until I had the pleasure of introducing him."

France having determined, (or in more just language) having no alternative but to sell, we have in another letter of the minister, dated April 13, the day after the first conversation with Talleyrand, a full account of the mode employed to intimate this intention to the American commission.

"By my letter of yesterday you learned that the minister had asked me on the 11th, whether I would agree to purchase Louisiana, &c., on the 12th I called upon him to press this matter further, he then thought proper to declare, that his proposition was only personal; but still requested me to make an offer, and, upon my declining to do so, as I expected Mr. Monroe the next day, he shrugged up his shoulders and changed the conversation; not willing, however, to lose sight of it, I told him, I had been long endeavouring to bring him to some point, but unfortunately without effect; that I wished merely to have the negotiation opened by any proposition on his part, and with that view had written him a note, which contained that request, grounded upon my apprehension of the consequence of sending out General Bernadotte without ena-

bling him to say, a treaty was begun. He told me, he would answer my note, but that he must do it evasively, because Louisiana was not theirs. I smiled at this assertion, and told him, that I had seen the treaty recognising it; that I knew the Consul had appointed officers to govern the country, and that he had himself told me that General Victor was to take possession; that, in a note written by the express order of the First Consul, he had told me General Bernadotte was to treat relative to it in the United States, &c. He still persisted, that they had it in contemplation to obtain, but had it not. I told him, I was very well pleased to understand this from him, because, if so, we should not commit ourselves with them in taking it from Spain, to whom by his account it still belonged, and that as we had just cause of complaint against her, if Mr. Monroe concurred in opinion with me, we should negotiate no further on the subject, but advise our government to take possession; he seemed alarmed at the boldness of the measure, and told me he would answer my note, but that it would be evasively. I told him I should receive with pleasure any communication from him, but that we were not disposed to trifle; that the times were critical, and though I did not know what instructions Mr. Monroe might bring, I was perfectly satisfied that they would require a precise and prompt notice; that I was very fearful, from the little progress I had made, that my government would consider me a very indolent negotiator. He laughed and told me, that he would give me a certificate, that I was the most importunate he had yet met with.

"There was something so extraordinary in all this, that I did not detail it to you, till I found some clue to the labyrinth, which I have, as you will find, before I finish this letter, and the rather, as I was almost certain, that I could rely upon the intelligence I had received of the resolution to dispose of this country. This day Mr. Monroe passed with me in examining my papers, &c. While he and several other gentlemen were at dinner with me, I observed the Minister of the Treasury, walking in my garden. I sent out Colonel Livingston to him; he told him he would return, when we had dined. While we were taking coffee, he came in, and after being some time in the room, we strolled into the next room, when he told me, he heard that I had been at his house two days before, when he was at St. Cloud; that he thought I might

have something particular to say to him, and had taken the first opportunity to call on me. I saw that this was meant as an opening to one of those free conversations, which I had frequently had with him. I accordingly began on the subject of the debt, and related to him the extraordinary conduct of the minister, &c. He told me, that this led to something important, that had been cursorily mentioned to him at St. Cloud, but as my house was full of company, he thought I had better call upon him any time before eleven that night. He went away, and a little after, when Mr. Monroe took leave, I followed him, he told me he wished me to repeat, what I had said relative to M. Talleyrand's requesting a proposition from me, as to the purchase of Louisiana. I did so, and concluded with the extreme absurdity of his evasions of that day, and stated the consequence of any delay on this subject, as it would enable Britain to take possession, who would readily relinquish it to us. He said that this proceeded upon a supposition of her making so successful a war, as to be enabled to retain her conquests. I told him, that it was probable, that the same idea might suggest itself to the United States, in which case, it would be their interest to contribute to render her successful, and I asked whether it was prudent to throw us into her scale? This led to long discussions of no moment to repeat; we returned to the point; he said that, what I had told him, led him to think, that what the Consul had said to him on Sunday at St. Cloud (the day on which, as I told you, the determination had been taken to sell) had more of earnest than he thought at the time; that the Consul had asked him what news from England? as he knew he read the papers attentively: he told him that he had seen in the London papers the proposition for raising 50,000 men to take New Orleans; the Consul said, he had seen it too, and had also seen, that something was said about 2,000,000 of dollars being to be disposed of among the people about him to bribe them, &c. and then left him; that afterwards, when walking in the garden, the Consul came again to him, and spoke to him about the troubles, that were excited in America, and enquired how far I was satisfied with this last note." "He (Marbois) then took occasion to mention his sorrow that any cause of difference should exist between our countries. The Consul told him in reply, 'Well, you have the charge of the treasury, let them give you one hundred millions, and pay their own claims and

take the whole country.' Seeing by my looks, that I was surprised at so extravagant a demand, he added that he considered the demand as exorbitant, and had told the First Consul that the thing was impossible; that we had not the means of raising that. The Consul told him, we might borrow it. I now plainly saw the whole business—first the Consul was disposed to sell; next he distrusted Talleyrand on account of the business of the supposed intention to bribe, and meant to put the negotiation into the hands of Marbois, whose character for integrity is established. I told him that the United States were anxious to preserve peace with France, that for that reason they wished to remove them to the west side of the Mississippi, that we would be perfectly satisfied with New Orleans and the Floridas, and had no disposition to extend across the river, that of course we would not give any great sum for the purchase, that he was right in his idea of the extreme exorbitancy of the demand, which would not fall short of one hundred and twenty-five millions, that, however, we would be ready to purchase, provided the sum was reduced to reasonable limits; he then pressed me to name the sum. I told him that this was not worth while, because as he only treated the enquiry as a matter of curiosity, any declarations of mine would have no effect. If a negotiation was to be opened, we should, Mr. Monroe and myself, make the offer after mature reflection. This compelled him to declare, that though he was not authorized expressly to make the enquiry from me, yet, that, if I would mention any sum, that came near the mark, that could be accepted, he would communicate it to the First Consul. I told him we had no sort of authority to go to a sum, that bore any proportion to what he mentioned, but that as he, himself, considered the demand as too high, he would oblige me by telling me, what he thought would be reasonable; he replied, that if I would name sixty millions, and take upon us the American claims to the amount of twenty more, he would try how far it would be accepted. I told him that it was in vain to ask any thing, that was so greatly beyond our means; that true policy would dictate to the First Consul not to press such a demand; that he must know, that it would render the present government unpopular, and have a tendency, at the next election, to throw the power into the hands of men, who were most hostile to a connexion with France, and that this would probably happen in the midst of a war.

I asked him, whether the few millions acquired at this expense would not be too dearly bought? He frankly confessed, that he was of my sentiments, but that he feared the Consul would not relax. I asked him to press this argument upon him, together with the danger of seeing the country pass into the hands of Britain. I told him that he had seen the ardour of the Americans to take it by force, and the difficulty, with which they were restrained by the prudence of the President—that he must easily see how much the hands of the war party would be strengthened, when they learned that France was upon the eve of a rupture with England; he admitted the weight of all this, ‘but,’ says he, ‘you know the temper of a youthful conqueror; every thing he does is as rapid as lightning; we have only to speak to him, as opportunity presents itself, perhaps in a crowd, when he bears no contradiction. When I am alone with him, I can speak more freely, and he attends; but this opportunity seldom happens, and is always accidental; try then, if you cannot come up to my mark, consider the extent of the country, the exclusive navigation of the river, and the importance of having no neighbour to dispute you—no war to dread.’ I told him that I had considered all these as important considerations, but, there was a point beyond which we could not go, and that fell far short of the sum he mentioned.”

The same intimation was, also, addressed to Mr. Monroe on the day after his arrival, through another channel, and in an indirect manner. In another letter of April 17, 1803, are the following remarks:

“But, upon waiting upon the minister, we found M. Marbois there, who told me that he had come to communicate to the minister what had passed between us, and that he greatly regretted the not being able to bring us to such an offer as he might mention to the First Consul. We were very graciously received by the minister, whom I pressed to obtain, as early a day as possible, for the reception of Mr. Monroe, as time pressed, and we were anxious to conclude our business, for reasons arising out of the present disturbed state of America—he told me, he would speak to the First Consul that night on the subject, and that he hoped some person would be appointed to treat with us, even before Mr. Monroe was presented. After a little general conversation, we took leave in

expectation, that Mr. Monroe would be presented this day, (Sunday) being a day of reception for the civil officers of the government. The next day Mr. Monroe and myself, after spending some time in consultation, determined to offer 50 millions, including our debts, but presumed it would be best only to mention 40 in the first instance; this I accordingly did. In a conference I had the 15th with M. Marbois, he expressed great sorrow, that we could not go beyond that sum, because he was sure that it would not be accepted, and that, perhaps, the whole business would be defeated; which he the more feared, as he had just received a note from the minister, indicative of the Consul's not being quite pleased, that he had so greatly lowered his original proposition. He said that he saw our situation, and he knew there was a point beyond which we could not go with safety to ourselves or the President; but he wished us to advance to that point. He said that he would, if I wished, go that very day to St. Cloud, and let me know the result. I reminded him of the Consul's promise to pay the debt. I placed in a stronger light his personal obligation on this subject, and desired him to urge it as an additional reason to conclude an agreement, which would facilitate the means of doing it. The next morning, which was yesterday, I again called to see him, he told me that he had been to St. Cloud—that the Consul received his proposition very coldly, and that I might consider the business no longer in his hands, since he had given him no further powers—that he had urged the Consul's promise, relative to the debt, which he admitted, but said, at the same time, he did not think it had exceeded three millions, though my letter expressly mentioned twenty. He expressed great sorrow upon the occasion, and advised me to press M. Talleyrand to present Mr. Monroe the next day, (that is this day) that he hoped, that if the Consul saw me, as he had a very particular esteem for me, that he would renew the subject with me himself."

The objects of the French government being fully and speedily ascertained, only two points of doubt could arise in the minds of those, employed in the negotiation by the United States, viz. whether it was desirable to secure the whole of Louisiana, and what price should be given for it. Neither of these difficulties were touched upon in their instructions.

But novel and unprovided for as they were, they do not seem to have caused much delay or hesitation. The last letter, from which we have made an extract, is dated the middle of April, and on the 30th of the same month the convention, by which the transfer was effected, was concluded. To M. de Marbois, already mentioned in this chapter, at that time minister of the treasury, and formerly known as a chargé in this country, was committed the negotiation on the part of France. In closing the account of this business, we have but one more extract to present to the notice of the reader. It is from a letter of May 13, 1803, of the commissioners, communicating intelligence of the signing of the convention.

“We found, however, as we advanced in the negotiation, that M. Marbois was absolutely restricted to the disposition of the whole, that he would treat for no less portion, and, of course, that it was useless to urge it. On mature consideration, therefore, we finally concluded a treaty on the best terms we could obtain for the whole.

“By this measure we have sought to carry into effect, to the utmost of our power, the wise and benevolent policy of our government, on the principles laid down in our instructions. The possession of the left bank of the river, had it been attainable alone, would, it is true, have accomplished much in that respect; but it is equally true, that it would have left much still to accomplish. By it our people would have had an outlet to the ocean, in which no power would have a right to disturb them; but while the other bank remained in the possession of a foreign power, circumstances might occur to make the neighbourhood of such power highly injurious to us in many of our most important concerns. A divided jurisdiction over the river might beget jealousies, discontents and dissensions, which the wisest policy on our part could not prevent or control. With a train of colonial governments established along the western bank, from the entrance of the river far into the interior, under the command of military men, it would be difficult to preserve that state of things, which would be necessary to the peace and tranquillity of our country. A single act of a capricious, unfriendly or unprincipled subaltern, might wound our best interests, violate our most unquestionable rights, and involve us in war. But by this acquisition, which comprises within our limits, this great river and all the streams, that empty into it from their sources to



the ocean, the apprehension of these disasters is banished for ages from the United States. We adjust by it the only remaining known cause of variance with this very powerful nation: we anticipate the discontent of the great rival of France, who would probably have been wounded at any stipulation of a permanent nature, which favoured the latter, and which it would have been difficult to avoid, had she retained the right bank. We cease to have a motive of urgency, at least, for inclining to one power to avert the unjust pressure of another. We separate ourselves in a great measure from the European world and its concerns, especially its wars, and intrigues; we make, in fine, a great stride to real and substantial independence, the good effect whereof will, we trust, be felt essentially and extensively in all our foreign and domestic relations. Without exciting the apprehensions of any power, we take a more imposing attitude with respect to all. The bond of our union will be strengthened, and its movements become more harmonious by the increased parity of interest, which it will communicate to the several parts, which compose it.

"In deliberating on this subject in a financial view, we were strongly impressed with the idea, that while we had only a right of deposit, or, indeed, while the right bank remained in the possession of a foreign power, it was always to be expected, that we should, at some time or other, be involved in war on questions, resulting from that cause. We were well satisfied, that any war would cost us more than hereby is stipulated to be given for this territory; that none could produce a more favourable result, while it might, especially in the present disturbed state of the world, prove the ruin of our affairs.

"There were other considerations which, though of minor importance, had nevertheless their due weight in our decision on this great question. If France, or any other power holding the right bank of the river, imposed lighter duties than comport with the revenue system of the United States, supposing even that we had acquired the left bank, all the supplies destined for our extensive and populous settlements on the other side, would be smuggled in through that channel, and our revenue, thereby, considerably diminished. Should such power open offices for the sale of lands on the western bank, our population might be drained to the advantage of that power, the price of our lands be diminished, and their

sale prevented. But by the possession of both banks, these evils are averted."

"Louisiana was acquired of Spain by France in exchange for Tuscany, which latter is settled by treaty on the son in law of the king of Spain, with the title of king of Etruria, and was estimated in the exchange, in consideration of its revenue, at 100,000,000 francs. The First Consul thought he had made an advantageous bargain in that exchange, as appears by the high idea, which he entertained of its value, as shown on many occasions. Louisiana was the territory, which he promised in his proclamation at the peace as an asylum to those, who had become unfortunate by the revolution, and which he spoke of as vast and fertile. When he made up his mind to offer the cession of it to the United States, it was contemplated to ask for it 100,000,000 exclusive of the debts, they owed to our citizens, which they proposed, we should also pay, with a perpetual exemption from foreign duties on the manufactures, productions and vessels of France and Spain in the ports of the ceded territory. From that demand, however, in respect to the sum, he receded under the deliberation of his own cabinet; for the first proposition, which M. Marbois made to us was, that we should pay 80 millions. Sixty of which in cash, the balance to our citizens, the whole in one year in Paris, with a perpetual exemption from foreign duties as above. The modification in the mode of payment, that is by stock, for from the quantum he never would depart, and the limitation of the term of the duties to twelve years, with the proviso annexed to it, which was introduced into the treaty, with every other change from this project, was the effect of the negotiation and accommodation, in which we experienced on his part and that of his government, a promptitude and candour, which were highly grateful to us."

The cession of Louisiana removed an active and dangerous neighbour, together with a fruitful source of trouble and war;—secured the geographical position of the United States, and left no part of the country without an ample outlet for its products. America became master of the mouth of the Mississippi, and thus established the safety of the commerce of the territory, west of the Alleghanies and of the great rivers of the interior. An European writer on diplomacy

makes the following remark on this convention:—"The news of the transfer of Louisiana was like a thunder stroke for the cabinet of Madrid, who then perceived the enormous fault it had committed in sacrificing the safety of Mexico. Florida, enclosed on both sides by the United States, was separated in the middle from the Spanish dominions, and would fall on the first occasion into the hands of its neighbours."\*

The convention, by which this cession was made, was negotiated April 30, 1803, at Paris, as we have already stated, by Robert R. Livingston and James Monroe on the part of the United States, and Barbé Marbois, on the part of France. Three conventions were signed the same day; the first to effect the cession, the second to regulate the price, and the third to secure the assumption by the United States of the debts due by the French government for illegal captures and condemnations.† The ratifications were exchanged

\* This observation was made in 1804. The whole prediction is now accomplished.

† Convention 1.—"ART. 1. Whereas, by article the third of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an 9, (1st October, 1800) between the First Consul of the French republic and his Catholic Majesty, it was agreed as follows:—'His Catholic Majesty promises and engages on his part, to retrocede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other states.' And whereas, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory: The First Consul of the French republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic in virtue of the above mentioned treaty, concluded with his Catholic Majesty.

"ART. 2. In the cession made by the preceding article are included

in October 1803, and the surrender of the province was made in the usual form, on the 20th of December in the same year, to the American commissioners, William C. C.

the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents relative to the domain and sovereignty of Louisiana, and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

"ART. 3. The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

"ART. 4. A commissary to be sent from France to receive the province of Louisiana from the Spanish officers, and to pass it over to the United States.

"ART. 6. The United States to execute the treaties of Spain with the Indians, &c.

"ART. 7. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce or manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than those paid by the citizens of the United States.

"During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory:

Claiborne and James Wilkinson. The province being erected, by an act of Congress, into a territorial government, William C. C. Claiborne was appointed by the President the

the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French government, if it shall take place in the United States; it is, however, well understood, that the object of the above article is to favour the manufactures, commerce, freight and navigation of France and of Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

"ART. 8. In future and for ever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favoured nations in the ports above mentioned."

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Convention 2.—"ART. 1. The government of the United States engages to pay to the French government, in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of the debts due by France to citizens of the United States.

"ART. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable half yearly in London, Amsterdam, or Paris, amounting by the half year, to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French government to be paid at either place: the principal of the said stock to be reimbursed at the treasury of the United States, in annual payments of not less than three millions of dollars each; of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the government of France, or to such person or persons as shall be authorized to receive it, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the government of the United States.

Governor and Intendant General. In 1811, Louisiana was admitted into the Union.\*

"ART. 3. It is agreed that the dollar of the United States, specified in the present convention, shall be fixed at five francs <sup>3333</sup>/<sub>10000</sub>, or five livres eight sous tournois.

Convention 3.—"ART. 1. The debts due by France to citizens of the United States, contracted before the 8th of Vendemiaire, ninth

\* We have found in a "Collection of Reports on Navigation and Trade," (London 1807) a letter of a British officer, written in '94 concerning Louisiana. As it illustrates the importance of this province, (with which the English appear to have been well acquainted) we shall make a few extracts.

"A Letter from an Officer of Rank in the Army, to one of his Majesty's Ministers of State respecting Louisiana.

"C— Street, May 21, 1794.

"What I allude to, sir, is this; that on a peace and general arrangement of the present extensive troubles, the cession of the island of New Orleans, with all, or a part of, West Florida, and as much of the territory bordering on the Mississippi as should be judged necessary, might be obtained by this country from the court of Spain; in which event the above mentioned advantages would consequently follow.

"In the present state of that country, all the West India islands could be plentifully supplied from the Mississippi with every species of lumber, at cheaper price.

"That country would also, in a little time, be able to supply the West Indies with abundance of many articles of provisions.

"When it is considered, that from the furthest distance up the Missouri river, whither our Indian traders from Canada at present resort, to the mouth of the Mississippi, (an extent of above three thousand miles) there is an unfathomable and uninterrupted channel; and that both the banks are of a fertility surpassing the most exaggerated accounts of those of the Nile, and capable of yielding every production of both hemispheres; and when we further reflect on the many great rivers which discharge themselves into the Mississippi, particularly the Ohio, which is of itself navigable above twelve hundred miles, with several others falling into it, little less in appearance than the Ohio itself; and the neighbouring soil and climate offering every inducement to come and settle there, with no channel, as I have already observed, to export the produce by, except the Mississippi;—I say, sir,

year of the French republic, (30th September 1800) shall be paid according to the following regulations, with interest at six per cent. to commence from the periods when the accounts and vouchers were presented to the French government.

"ART. 2. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exceptions of the following articles, shall not be admitted to the benefit of this provision.

"ART. 3. The principal and interest of the said debts shall be discharged by the United States, by orders drawn by their minister plenipotentiary on their treasury; these orders shall be payable sixty days after the exchange of ratifications of the treaty and the conventions signed this day, and after possession shall be given of Louisiana by the commissioners of France to those of the United States.

"ART. 4. It is expressly agreed, that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been and are yet creditors of France, for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged within the time mentioned in the said convention of the 8th Vendemiaire, ninth year, (30th September 1800.)

"ART. 5. The preceding articles shall apply only, 1st, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States otherwise than he might have had to the government of the French republic, and only in case of the insufficiency of the captors; 2d, the debts mentioned in the said fifth article of the convention contracted before the 8th Vendemiaire, an 9, (30th September 1800) the payment of which has been heretofore claimed of the actual government of France, and for which the creditors have a right to the protection of the United States; the said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed: it

when all those circumstances are considered, there can hardly be a calculation formed of the *shipping* that will be necessary, in some short time hence, for the transport of the immense productions that will be sent down that river.

"Should the Americans thus once firmly possess themselves of that colony, it will be very difficult to dislodge them; and from the time they establish a footing in any port in the Gulph of Florida, the intercourse between the European nations and the West Indies *will be very insecure* indeed."



is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens, who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who by that reason and the nature of their commerce ought to be regarded as domiciliated in the places, where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention, saving, however, to such persons their claims in like manner as if this treaty had not been made.

"ART. 6. And that the different questions which may arise under the preceding article may be fairly investigated, the ministers plenipotentiary of the United States shall name three persons, who shall act from the present and provisionally, and who shall have full power to examine, without removing the documents, all the accounts of the different claims already liquidated by the bureau established for this purpose by the French republic, and to ascertain whether they belong to the classes designated by the present convention and the principles established in it ; or if they are not in one of its exceptions, and on their certificate, declaring that the debt is due to an American citizen or his representative, and that it existed before the 8th Vendemiaire, 9th year, (30th September 1800) the creditor shall be entitled to an order on the treasury of the United States, in the manner prescribed by the third article.

"ART. 7. The same agents shall likewise have power, without removing the documents, to examine the claims which are prepared for verification, and to certify those which ought to be admitted by uniting the necessary qualifications, and not being comprised in the exceptions contained in the present convention.

"ART. 8. The same agents shall likewise examine the claims which are not prepared for liquidation, and certify in writing those which in their judgments ought to be admitted to liquidation.

"ART. 9. In proportion as the debts mentioned in these articles shall be admitted, they shall be discharged with interest, at six per cent. by the treasury of the United States.

"ART. 10. And that no debt which shall not have the qualifications above mentioned, and that no unjust or exorbitant demand may be admitted, the commercial agent of the United States at Paris, or such other agent as the minister plenipotentiary of the United States shall think proper to nominate, shall assist at the operations of the bureau, and cooperate in the examination of the claims ; and if this agent shall be of opinion that any debt is not completely proved, or if he shall judge that it is not comprised in the principles of the fifth article

above mentioned; and if, notwithstanding his opinion, the bureau established by the French government should think that it ought to be liquidated, he shall transmit his observations to the board established by the United States, who, without removing documents, shall make a complete examination of the debt and vouchers which support it, and report the result to the minister of the United States. The minister of the United States shall transmit his observations, in all such cases to the minister of the treasury of the French republic, on whose report the French government shall decide definitively in every case.

The rejection of any claim shall have no other effect than to exempt the United States from the payment of it, the French government reserving to itself the right to decide definitively on such claim so far as it concerns itself.

"ART. 11. Every necessary decision shall be made in the course of a year, to commence from the exchange of ratifications, and no reclamation shall be admitted afterwards.

"ART. 12. In case of claims for debts contracted by the government of France with citizens of the United States, since the 8th Vendemiaire, ninth year, (30th September 1800) not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made."

## CHAPTER X.

## CONTINENTAL SYSTEM.

*Livingston Minister in France—Turreau and Serrurier in this country—America very prosperous—Berlin Decree—Great calamity—Beginning of Continental System—All Continent, except Turkey, in the League—America only neutral—Milan Decree—Canton, in China, only port not blockaded—Embargo—Bayonne and Rambouillet Decrees—Cause of War against France—Repeal of French Decrees—England refused to acknowledge the validity of the act—Antedated Decree—French Spoliations—No indemnity—Angry correspondence with France.*

NOTWITHSTANDING the vexations, to which the American trade was exposed in the West India seas, during the years 1804 and 5, the country was in a condition of great and increasing prosperity, and of perfect security, while Europe was bleeding at every pore.\* But the eagerness and suc-

\* James A. Bayard, of Delaware, appointed Minister Plenipotentiary to France, in February 1801, did not accept the appointment. In June of the same year, Robert R. Livingston, of New-York, was appointed to the same court, with the same rank. The generals Turreau and Serrurier were the ministers of France, in this country, from 1804 to the war with England, General Turreau being accredited in 1804, and General Serrurier in 1812. M. Turreau published, in 1815, in Paris, a pamphlet, with this title, "Aperçu, sur la situation politique des Etats Unis d'Amérique." It is an unfavourable account of the political institutions of this country, which, he thinks, cannot be permanent. The French government had no minister in this country after M. Adet was withdrawn in 1797; but L. A. Pichon, (the individual already mentioned as having been at the Hague) was the Chargé, from March 1801 to September 1804, the period of the arrival of General Turreau, who had, however, been appointed in the preceding December, after the treaty of Louisiana. John Armstrong, of New-York, succeeded Mr. Livingston, in 1804.

cess, with which America drove her commerce, was soon disturbed by a most extraordinary system of maritime legislation. The devastation, that had hitherto preyed upon the continent, extended itself to the ocean; and the ports of one of the most extensive empires in the world, were declared in rigorous blockade, by a nation, that had not a single armed vessel afloat. The decree, to which we allude, is a short one; it was issued immediately after the fatal and decisive victory of Jena.

"IMPERIAL CAMP, BERLIN, November 21, 1806.—Napoleon, Emperor of the French, and King of Italy, considering, &c., decrees:—

"Article 1. The British islands are in a state of blockade.

"2. All commerce and correspondence with them is prohibited. Consequently, all letters, or packets, written in England, or to an Englishman, written in the English language, shall not be despatched from the post offices, and shall be seized.

"3. Every individual, a subject of Great Britain, of whatever rank or condition, who is found in countries, occupied by our troops, or those of our allies, shall be made prisoner of war.

"4. Every warehouse, all merchandise or property, whatever, belonging to an Englishman, are declared good prize.

"5. One half of the proceeds of merchandise, declared to be good prize, and forfeited, as in the preceding articles, shall go to indemnify merchants, who have suffered losses by the English cruisers.

"6. No vessel, coming directly from England, or her colonies, or having been there since the publication of this decree, shall be admitted into any port.

"7. Every vessel, that, by a false declaration, contravenes the foregoing disposition, shall be seized, and the ship and cargo confiscated, as English property.

"9. Communications of this decree shall be made to the Kings of Spain, Naples, Holland, Etruria, and to our other allies; whose subjects, as well as ours, are victims of the injuries and barbarity of the English maritime code."

It is obviously matter of historical curiosity, whether this decree was retaliatory, or the beginning of that system, by

which the commerce of neutrals was, in the end, so much harassed ; though, in reality, it signifies very little, indeed, that the French emperor had been provoked to it by the unjust acts of other nations. At the same time, it does not appear, that any instruction, or order in council, issued by Great Britain, antecedent to the Berlin decree, though all violating the laws of nations, had been invested with the wide, unsparing reach of this measure. The order of Mr. Fox, of April and May, at the period the Prussians took possession of Hanover, included a great extent of coast ; still, it had not the theatrical air of the Berlin decree,—for it was local or limited in its operation ; and the British navy was, in some degree, competent to the task of maintaining a partial blockade, along a line of six hundred miles. And if the true origin of the commercial restrictions of the French revolution wars, is to be found in the first coalition of 1792, the Berlin decree was still a full departure from the system, as it respects neutrals ; for the United States had never acknowledged the principles, in relation to blockades, contended for by England. But in no case before, had a whole empire, distributed over the four continents of the earth, been made subject to the application of a principle, which, in the original strictness and purity of maritime law, was intended to be confined to a single haven or harbour. The result of this state of things was, that every portion of the habitable globe, with which nations traded, was in a state of blockade, with the exception of the port of Canton, in China.

The mind is impressed with a singular sensation, in beholding a great conqueror, just reposing from one of his most signal victories, in the capital of the sovereign, whose army he had rather destroyed than defeated, issuing decrees, that embraced, in their desolating effects, almost every sea of the civilized world. The power of Napoleon Bonaparte was scarcely bounded by any river on the continent of Europe. In gaining his great victories, in adding state after state to his dominions, in placing brother after brother upon the thrones of the old nations, whose dynasties he had thrown down, he seems to have been fulfilling his proper part,—to

have been accomplishing the destinies of which, under Heaven, he was the humble instrument. Wherever he marched, he carried a force with him sufficient to effect his purposes. This was the legitimate exercise of the vast power, with which he was intrusted, by Providence, for objects, it is not yet altogether in the reach of man to comprehend. But, when he extended his ambition to the ocean,—when he undertook to overwhelm whole countries, by maritime decrees, we perceive that he has left the orbit, in which it was his destiny to move ; and we feel, that the unity of his theatrical character is destroyed. The only weapon he could there use, was menace ; he descended to an element, upon which his countrymen had, latterly, always failed—upon which he had, himself, always appeared in dread of an enemy—upon which he was never seen, except as a fugitive. There was one field, upon which he was always an inferior ; and, to enter upon it, he left another, upon which he had never been conquered.—In another point of view, it was the first act of a vast and magnificent project, to exclude the trade and navigation of Great Britain from the ports and rivers of the whole continent of Europe,—and to overwhelm her naval greatness, and infinite extent of commerce, by an irresistible accumulation of power and resources on the land. Perhaps, this idea was not original with Napoleon ; for we have already seen a limited attempt of the same description, made in 1796 by the Directory. But the scheme failed then. The Berlin decree was the beginning of what has since been emphatically called, the “ Continental System.” Napoleon had not been able to approach his enemy on the ocean ; he had lost St. Domingo, and the principal islands in the West India seas ; he had been compelled to abandon his project of invading England ; and, as a final blow, the battle of Trafalgar destroyed his own navy, and the flower of that of Spain. He undertook, then, to subdue the ancient, deadly rival of his country, by subduing the continent. The price of the victories of Austerlitz, Jena, Friedland and Eylau, was to be far greater, either than the glory of the French arms, or the conquest of the most powerful states of the old world. It

was to be attended with the downfall of the commerce of the English, and the ruin and bankruptcy of that rich nation. Again the scheme failed. There is a limit to power, even at the moment when it appears to have transcended all the bounds human efforts can set to it;—there is a principle, always at work, to preserve some sort of balance in the world. These projects of universal dominion have never entirely succeeded; and, we presume, never will, while nations retain any portion of civilization.

France has produced all the great conquerors of modern times; no country, indeed, is better situated for conquests. But none of the conquerors of that remarkable people, have appeared under more favourable auspices, to acquire a universal dominion, than Napoleon. He returned from Egypt, at a time when the revolution was just brought to a close. He appeared then before the world, and with unbounded applause. Those who were in France, at the time the question was publicly proposed, whether Napoleon should be consul for life—or, as it was placarded on the walls of all the great cities, "*Bonaparte sera-t-il consul à vie*"—have often described the universal enthusiasm that prevailed in his favour. In six years, he attained to a height of power, that speedily threatened a universal empire;—he then began the continental system;—he became the head of it; and a refusal, on the part of any government, to adopt it, was tantamount to a declaration of war. Prussia, Russia, Austria, Denmark, the states of the new confederation of the Rhine, the kingdom of Italy, Naples, Holland and Spain, formally became members of the league. French troops took possession of the Pontificate, of Etruria, and of Portugal, where it was, of course, enforced. There did not remain a state on the European continent, with the exception of the Ottoman Porte, that did not enter into this system. Napoleon had, undoubtedly, made preparations to compel a compliance from Turkey,—but he became occupied and embarrassed with his Spanish war. Thus, at one time, was this system generally, and, to all appearance, firmly established.

To speak with precision, America was the only neutral in



the civilized world at this period ; and no evils have ever fallen on her so heavily, as the proceedings of the two great belligerents, commencing with the Berlin decree of November 1806. This measure awakened, in the outset, little attention ; and does not appear, at first, to have been thought of serious importance even in England. In the United States, it was considered a municipal regulation. There were captures made under the decree shortly after it was announced, but no actual condemnation took place till the case of the *Horizon* in November 1807—nearly a year after the promulgation. The American minister at Paris, Mr. Armstrong, regarded this act as municipal, till October 1807 ; and he assured his government, there was no ground for uneasiness or apprehension. The decree had the appearance of being issued in a moment of triumph and conquest ; and the expressions, upon a careful and attentive perusal and examination, do not indicate any precise or definite object, though, in general terms, the British Islands were declared to be in a state of blockade, and all commerce and correspondence with them were forbidden. But the decision in the case of the *Horizon* was exceedingly alarming. The delay of a year to put the decree into operation had justly satisfied America, that the vessels of this country were not included in the provisions of it. They relied for their protection on the acknowledged principles of public law, on the rights of neutral commerce, urged by France since the year 1780, with as much vehemence and steadiness as by any other government whatever, and especially on the 12th and 14th articles of the convention, concluded in 1800, at Paris. We can only account for the delay in enforcing this decree from an expectation entertained by France, that the United States would join her in the continental system against England. All the difficulties, observed M. Champagny, in November 1807, “ which have given rise to your reclamations, would be removed with ease, if the government of the United States, after complaining in vain of the injustice and violations of England, took with the whole continent the part of guaranteeing itself therefrom. England has introduced into the

maritime war an entire disregard for the rights of nations; it is only in forcing her to a peace, that it is possible to recover them. On this point the interest of all nations is the same. All have their honour and independence to defend." But the terms, on which it was proposed to America to enter into this league, or armed neutrality, were not such as inspired confidence or discovered consistency. They asserted, in an extreme degree, the same principles of blockade against which America had constantly protested; principles that the report of the French minister of November 1806, declared to be "monstrous and indefensible."

In January and November of the next year, (1807) England issued retaliatory orders in Council.\* These were followed by the Milan decree of December 1807.† England and France thus divided, by their several legislative acts, the civilized

\* See Chapter—Treaty of Ghent.

† "Royal Palace at Milan, December 17, 1807. Napoleon, &c.

"1. Every ship, to whatever nation it may belong, that shall have submitted to be searched by an English ship, or to a voyage to England, or shall have paid any tax whatsoever to the English government, is thereby, and for that alone, declared to be *denationalized*, to have forfeited the protection of its king, and to have become English property.

"2. Whether the ships thus denationalized by the arbitrary measures of the English government, enter into our ports, or those of our allies, or whether they fall into the hands of our ships of war, or of our privateers, they are declared to be good and lawful prize.

"3. The British Islands are declared to be in a state of blockade, both by land and sea. Every ship of whatever nation, or whatsoever the nature of its cargo may be, that sails from the ports of England, or those of the English colonies, and of the countries occupied by English troops, and proceeding to England, or to the English colonies, or to countries occupied by English troops, is good and lawful prize, as contrary to the present decree, and may be captured by our ships of war or our privateers, and adjudged to the captor.

"4. These measures, which are resorted to only in just retaliation of the barbarous system adopted by England, which assimilates its legislation to that of Algiers, shall cease to have any effect with respect to all nations, who shall have the firmness to compel the English government to respect their flag."

world between them—one held the land—the other the sea. And it did not lay in the quiet, well expressed remonstrance of a minister, in the cold, studied language of diplomacy, either to divert the belligerents from the great course of their policy, or to avert from the successful, unoffending commerce of the United States, the vast mischiefs of this accumulation of decrees and orders. The principal evils and devastation of the war had hitherto been confined to the land; but Napoleon having overthrown, on the plains of Germany, or of northern Prussia, all the coalitions England had been able to rally against him, from that time the contest took a new turn. And the United States, hitherto so prosperous, were now called to bear their part in the calamities, Europe had so abundantly suffered. At this crisis, America withdrew her commerce from the ocean. A general embargo, without limitation as to time, was passed in December 1807; a great sacrifice; but the experiment was worth making, if it could prevent the necessity of hostilities. It was considered to be strictly a measure of precaution, and by no means intended to preclude any attempt, whatever, at negotiation. But this act of the American government certainly produced no effect on France. So far from leading to any conciliatory proposition, the first accounts of it in that country were succeeded by a very extraordinary edict, known by the name of the decree of Bayonne of April 1808. It directed all vessels then in the ports of France, or that should thereafter come in, to be seized. The pretence of this order was, that as no American vessels could at that time be navigating the ocean without violating the embargo, they must, in every instance, be British property; though in truth, many vessels were innocently in French ports, or did so arrive there, having left the United States on distant voyages; and at the time the embargo was laid, others were at sea, engaged in their usual commerce. As the law imposed no obligation on them to return, their absence was in no respect criminal. But the embargo, being a municipal regulation of the United States, it was competent alone to that country to execute it;—some vessels left our ports during the continuance of that

measure ;—this act was an offence against their own government ; but it was none against a foreign one ; it did not disfranchise or denationalize them. The embargo naturally belonged to the system of forbearance and neutrality, commenced under the first administration, after the adoption of the constitution. But we had fallen upon far different times ; such assaults upon the rights of nations had never before been witnessed ; nor had the world ever seen such a weight and concentration of power employed to enforce those aggressions.

The temper and disposition manifested at this time by the French Emperor were unfavourable and alarming. Mr. Madison, Secretary of State, in a letter of July 1808 to General Armstrong, the minister at Paris, remarks :

“ If France does not wish to throw the United States into a war against her, for which it is impossible to find a rational or plausible inducement, she ought not to hesitate a moment in revoking, at least, so much of her decrees, as violate the rights of the sea, and furnish to her adversary the pretext for his retaliating measures. It would seem as if the imperial cabinet had never paid sufficient attention to the smallness of the sacrifice, which a repeal of that portion of its system would involve, if an act of justice is to be called a sacrifice.”

The United States were, however, determined not to expose themselves to the alternative of a war. The whole policy of the government seems to have been to induce one of the belligerents to repeal their illegal decrees, both to furnish an argument in their representations to the other, and to enable them, in case of an extremity no longer to be avoided, to meet only one enemy in Europe.

The most unjustifiable assault, exercised by France, on the neutrality and moderation of the United States, was in the case of the Rambouillet decree of March 23, 1810.\*

\* “ All vessels, that sailed under the flag of the United States, or such as were owned in whole or in part by any citizen thereof, which from the 20th of March 1809, had entered, or should thereafter enter, the ports of the French Empire, or those of their colonies, or of the

As in the case of the Bayonne decree of April 1808, the French government sought a pretext for this act in the proceedings of our own. The nonintercourse act of March 1809, was alleged to be the measure, which led to so sweeping a retaliation. But there was as little foundation or pretence for this proceeding in the one instance as in the other. The nonintercourse law was an act regulating the trade of this country with France and England, a law any nation had a right to adopt; for it did not favour either belligerent, and a notice of nearly three months was given of its existence. Very few vessels were condemned under it; none, we believe, belonging to France. But it is quite clear, that if France believed herself wronged, she should have demanded redress of this government; or, if she had undertaken to indemnify herself, the amount of the indemnity should, in some degree, have been proportioned to the injury. The whole American commerce, that had innocently, and in the fair course of trade, entered the ports of that country, should not have been indiscriminately and hastily swept off. Again, the Rambouillet decree could scarcely be said to be in retaliation of the nonintercourse of March 1809; for that law, when communicated to the French government, was not complained of, and the Rambouillet was not issued for twelve months after.

We have now finished the account of the French decrees till the repeal of the Berlin and Milan in August 1810. The American government carried its love of peace too far, in not declaring war against France, after the promulgation of the Rambouillet decree. There are few public transactions, in the history of this country to be compared to the violence and injustice of that act, and the decree of Bayonne. It was the deliberate proceeding of the French government; and by the influence of France its operation was extended to Spain, Holland and Italy. Those decrees were not issu-

countries occupied by the French, were directed to be seized and sold, and the proceeds of the sales were deposited in the *caisse d'amortissement*."

ed in the spirit of retaliation ; the French government did not allege the same pretext for their promulgation as for those of Berlin and Milan. But in a time of profound peace, in defiance of a solemn convention, and of every principle of good faith, the whole American commerce in the ports of France, Spain, Italy and Holland, was seized and sold for the benefit of the imperial treasury.\*

We now arrive at a period in the history of our connexion with France, remarkable for having ultimately led to the war of 1812 with Great Britain. This was the declaration of M. de Champagny, which we shall presently recite, announcing the repeal of the Berlin and Milan decrees. The act of May 1810, regulating foreign intercourse, having been notified to the French government, an official communication was without delay made to Mr. Armstrong, informing him that the Berlin and Milan decrees would cease to have effect after the 1st day of November 1810, though a copy of the decree was not sent with the document. The notification was in these words: "In this new state of things, I am authorized to declare to you, that the decrees of Berlin and Milan are revoked, and that after the 1st of November, they will cease to have effect, it being understood, that in consequence of this declaration, the English shall revoke their Orders in Council, and renounce their new principles of blockade, which they have wished to establish, *or that the United States, conformably to the act you have just communicated, shall cause their rights to be respected by the Eng-*

\* "Was the capture and condemnation of a ship driven on the shores of France by stress of weather and the perils of the sea, nothing? Was the seizure and sequestration of many cargoes brought to France in ships violating no law, and admitted to regular entry at the imperial custom houses, nothing? Was the violation of our maritime rights, consecrated as they have been by the solemn forms of a public treaty, nothing? In a word, was it nothing, that our ships were burnt on the high seas, without other offence than that of belonging to the United States, or other apology than was to be found in the enhanced safety of the perpetrator."—*Letter of General Armstrong to the French Minister.*

*lish.*" This mode of revocation in ordinary cases would, perhaps, have attracted no attention. It is the form usually adopted in the diplomatic notifications of the acts of a government; especially it is the uniform manner in which blockades are notified to foreign ministers by the British cabinet. But a vast importance was attached to it from the circumstance, that England refused to receive it as sufficient evidence of the repeal. No formal decree was, however, actually passed at this time, at least, none has ever been published. But the American government considered the declaration of M. de Champagny sufficient and satisfactory, and it possessed the authority of all its diplomatic agents in Europe, that no American vessel was condemned after the revocation for a violation of these decrees, though captures took place and other outrages were committed. Some of these vessels were burnt on the high seas,\* and others con-

\* "The undersigned, Minister Plenipotentiary of the United States, has the honour to transmit, here enclosed, to his excellency the Duke of Bassano, Minister of Foreign Relations, copies of the protests of Thomas Holden, master of the American brig Dolly, of New-York, and Stephen Bayard, master of the American ship Telegraph of New-York, by which his excellency will learn that these vessels have been met with at sea by his imperial and royal majesty's ships, the Medusa, captain Raoul, and the Nymph, captain Plasson, who, after having plundered them of a part of their cargoes, destroyed the remainder by burning the ships. *It is a painful task for the undersigned to be obliged so frequently to call the attention of his excellency to such lawless depredations.* It appears to him that in the whole catalogue of outrages on the part of the cruisers of the belligerents, of which the United States have such great and just reason to complain, there are none more vexatious and reprehensible than this. Upon what ground can such spoliation be justified? Will it be alleged, that the destruction of these vessels was necessary, in order to prevent their carrying information to the enemy, and thereby endanger the safety of these frigates upon a trackless ocean? This would be a poor defence. After boarding these peaceful traders, they might easily have led their course south, when they intended to go north. They could even have maintained their assumed character of British ships, under which, it seems, they began the commission of these flagrant acts, and thus have prevented all information of cruising in those latitudes. But it appears that



demned, on pretence that their cargoes were British property. On the 2d of November 1810, the President issued a proclamation, announcing the fact of the repeal, and restoring the intercourse with French public armed vessels. The Bayonne and Rambouillet decrees expired with the Berlin and Milan. Not any other of our difficulties, however, with France were removed ;—no offer was made towards an indemnity for American property unjustly seized, and sold, nor any progress made in renewing the convention of 1800, which had expired in 1808.

The French declaration of November 1810, was attended with many embarrassing circumstances ; captures were still made under the decrees, and the trials, being much delayed and ultimately referred to the tribunals at Paris, great expenses awaited the recovery of the property. These captures continually threw doubts on the actual situation of the decrees, and afforded pretexts to England to maintain her orders. The United States were, accordingly, dissatisfied with this equivocal conduct in France. Even many of the official acts of the French government, at this period, combined to prove that the decrees were not repealed. The emperor declared, himself, that he should not abandon his continental system ; and, in the celebrated report of the Duke of Bassano, concerning neutral rights, no notice was taken of the repeal, or the modification of the decrees, or of their ceasing to apply to the United States. It was far, indeed, from being an act of courtesy and frank conduct in the French government, to withhold the promulgation of a formal instrument, announcing the revocation, as it respects this country. On this subject, we shall quote part of a despatch of November 1811, from Mr. Monroe to the minister at Paris :

plunder, and not safety, was the object, for which they have thus disgraced the imperial flag. *For his excellency will probably have learnt from Brest, where the frigates entered, that the twenty boxes of spices and other articles, taken from the Telegraph, were smuggled on shore, and, it is said, were sold for the benefit of the equipage of the Medusa,*"  
—Letter of Mr. Barlow to the French Minister.

"It is not sufficient, on the final decision of a cause brought before the French tribunal, that it should appear, that the French decrees are repealed. An active prohibitory policy should be adopted to prevent seizures on the principles of those decrees. All that is expected, is, that France will act in conformity to her own principles. If that is done, neutral nations would then have an important object before them, and one belligerent, at least, prove that it contended for principle rather than for power, that it sought the aid of neutral nations in support of that principle, and did not make it a pretext to enlist them on its side to demolish its enemies. The abuses that are practised by French privateers in the Baltic, the Channel, Mediterranean, and wherever else they cruise, have, of late more especially, reached an enormous height. In the Baltic, they have been the more odious, from the circumstance, that it was expected that they had been completely suppressed there. Till of late, these abuses were imputed to the privateers of Denmark, which induced the President to send a special mission to the Danish government, which it was understood was producing the desired effect. But it is now represented, that the same evil is produced by a collusion between the privateers of Denmark and those of France. Hence it assumes a worse character. To seizures equally unlawful, is added, by carrying the causes to Paris, still more oppressive delays."—"What advantages does France derive from these abuses? Vessels trading from the United States can never afford cause of suspicion on any principle, nor ought they to be subject to seizure. Can the few French privateers, which occasionally appear at sea, make any general impression on the commerce of Great Britain? They seldom touch a British vessel. Legitimate and honourable warfare is not their object. The unarmed vessels of the United States are their only prey."

General Armstrong having obtained leave to return home, Joel Barlow, of Connecticut, was appointed minister plenipotentiary to St. Cloud, and arrived in September 1811, in Paris. Mr. Barlow died in Poland, in October 1812, having gone there on an invitation from the Duke of Bassano, for the purpose of completing a commercial treaty with France, on the principle of complete reciprocity. We have no means of ascertaining whether he could have accomplished this object;—it is, at any rate, certain that Mr. Barlow

made no progress in the negotiation the year he was in France. A serious discussion of the business was postponed month after month, it is probable, partly, in consequence of the mass and variety of affairs, pressing upon the emperor and his ministers, preparatory to the expedition to Russia, though the government appeared to have determined not to conclude a treaty with France, till full indemnity was made for past spoliation. The only circumstance of much importance, that occurred during Mr. Barlow's residence in Paris, was the celebrated decree of April 28, 1811. This decree was in these words :

"Palace of St. Cloud, April 28, 1811. Napoleon, Emperor of the French, &c. &c. On the report of our Minister of Foreign Relations. Seeing by a law passed on the 2d March 1811, the Congress of the United States has ordered the execution of the provisions of the act of nonintercourse, which prohibits the vessels and merchandise of Great Britain, her colonies and dependencies, from entering into the ports of the United States ;—considering that the said law is an act of resistance to the arbitrary pretensions consecrated by the British Orders in Council, and a formal refusal to adhere to a system, invading the independence of neutral powers, and of their flag, we have decreed, and do decree as follows : The decrees of Berlin and Milan are definitively, and, to date from the first day of November last, considered as not having existed (non avenus) in regard to American vessels."

The first intelligence of it was communicated to Mr. Barlow in the beginning of May 1812, and received by the government in July of the same year. No communication of the decree was made by the French minister, nor was any explanation of this business ever given. A knowledge of the decree was withheld from this country for more than a year. Whether this was the actual date, or whether it was antedated, cannot now be ascertained, nor the motives that led to this uncommon proceeding, Mr. Barlow never having obtained any explanation of it. Mr. Crawford, of Georgia, who, as his successor, arrived in France in August of the next year, had no means, on account of the great pressure of other public affairs, and the subsequent downfall of the

imperial dynasty, of bringing on any discussions, whatever, relating to the concerns of the two governments. But it is not likely any explanation was or could have been given. We shall close this account of the relations of the United States with France with an extract of another letter of Mr. Monroe, of July 1812, to the minister, at Paris :

"It appears that the same oppressive restraints on our commerce were still in force, that the system of license was persevered in, that indemnity had not been made for spoliations, nor any pledge given to inspire confidence that any would be made. More recent wrongs, on the contrary, and of a very outrageous character, have been added to those, with which you were acquainted, when you left the United States. By documents, forwarded to you in my letter of the 21st of March, you are informed of the waste of our commerce, made by a squadron from Nantz, in January last, which burnt many of our vessels trading, to the peninsula. It is hoped that the government of France, regarding with a prudent foresight the probable course of events, will have some sensibility to its interest, if it has none to the claims of justice on the part of this country. On the French decree of the 28th April 1811, I shall forbear to make many observations, which have already occurred, until all the circumstances connected with it are better understood."

The American government was, at no time, insensible to the wrongs done it by France. Uncommon forbearance was exercised in abstaining from actual hostilities, but a doubt never could have been entertained, that just and abundant cause of war existed. The affair of the Berlin and Milan decrees was far from being satisfactory to the United States. Those formal proofs of the revocation were not furnished, which, in the peculiar circumstances of the case, as the repeal itself was made conditional on a movement either of the English or the American government, it was the duty of a friendly state to have produced. We have no means of ascertaining why a decree was withheld. It could not have been, because the government did not choose to implicate its good faith, as much involved by the declaration of the Duke of Cadore, as could have been done by any other official instrument. France could not have foreseen, that Eng-

land would refuse to acknowledge the authenticity of the declaration, or the sincerity of the practice. As to the "antedated decree," a copy of it was furnished Mr. Barlow before the declaration of war against Great Britain was made in this country. If this decree had been known in time, hostilities would probably have been prevented. This could not, therefore, have been the motive of France, in producing, at that very late hour, a copy of so important a document. On the other hand, if France anticipated the war, if war was considered no longer to be avoided, what purpose did it answer to produce the decree in the actual state of hostilities, or on the eve of a declaration. The entire correspondence of the American government with France, from 1806 to the fall of the imperial dynasty in 1814, was of an angry nature—a series of complaints, remonstrances and threats of retaliation. Every year appeared to augment the dissatisfaction felt by this country,—increased the claims for indemnity,—diminished the prospect of an alliance. The American minister at Paris, as our quotations prove, was directed to press a consideration of these grievances with more zeal and vigour. And his instructions forbade him from entering on a treaty, till those representations were satisfied. We finish this portion of the relations of America with France, with the downfall in 1814 of Napoleon Bonaparte. Although no treaty was concluded during the period of which we have attempted a brief sketch in this chapter, the circumstances of the times were too important to have justified us in passing over it in entire silence.\*

\* In addition to these treaties and conventions with France, a contract was made by Dr. Franklin with M. de Vergennes, in July '82, to regulate the mode of payment, and the rate of interest of the 18,000,000 livres, loaned by his Christian Majesty to the confederation, together with the loan (10,000,000) in Holland. In November '88, a convention was made by Mr. Jefferson, with M. de Montmorin, to define the duties, powers and privileges of consuls. We have not thought it necessary to take any notice of this instrument, as our consuls in Europe, (and, also, French consuls in this country) are only commercial agents; they are not invested, like the consuls on the Barbary coast, with diplomatic functions. In '83, America again contracted a loan of 6,000,000 livres with the French government.

## CHAPTER XI.

## RELATIONS WITH RUSSIA.

*Not originally applied to for aid by Congress of '77—Little known at that time in Europe—Relations friendly—Armed neutrality—Dana sent to Russia in '80—Propriety of applying to foreign courts—Izard's, Adams', and Franklin's opinions—Instructed to propose America as a member of the armed neutrality—Not received by the Empress—French ministers abroad kind—Dana in awkward situation at St. Petersburg—Letters to Russian ministers—Singular opinion of Empress—Russia not disposed to acknowledge independence—Anecdote of Franklin and Count du Nord—Neutrality awakens great anxiety—Congress, at return of peace, took earliest steps to prevent a connexion with "Armed Neutrality"—Instructions to ministers in Europe not to agree to support neutrality by force of arms—Adams, minister to Russia—Pahlen to this country—Daschkoff—No treaty or commercial convention, though great trade.*

RUSSIA was originally not one of the European states, to whom an application was made by Congress in 1777 for aid, and for the recognition for the independence, though some circumstances, that will presently be mentioned in a subsequent year, appeared likely to give uncommon importance to the first diplomatic connexions of the two countries. We may account for this omission entirely by local considerations. The weight and power of that nation, since become so formidable, had been confined principally to the north, and to wars with the Turks. Little known to Europe, except by her attacks on the Prussian dominions in the time of the great Frederic, and by sharing in the wicked partition of Poland in 1772, the consequences of the French revolution first brought her armies across the Alps and the Rhine, first developed the resources of that country to full view,

and in most successful action. No European power has, however, conducted itself in a more friendly manner towards America than Russia; the relations of the two countries having all along been of an amicable and satisfactory kind. As early as 1791 we had a direct trade up the Baltic, but till 1809 and 10, it was principally confined to imports. It has since been great, though, as to imports, consisting chiefly of articles that might well be made staples in this country. We have suffered less interruption in our commerce with Russia than with any other continental nation of Europe, the Emperor Alexander not having adopted the French system till after the treaty of Tilsit, in 1807, and having taken the first opportunity to release himself from the obligation of enforcing it, by publishing the celebrated Ukase of December 1810. Indeed, the system was never executed with much severity in Russia; British goods never having been burnt in that country, as on other parts of the continent, and they always enjoyed the privilege of being admitted in neutral bottoms.

Notwithstanding Catharine II. was the author of the armed neutrality of 1780, Russia was one of the first parties to the maritime coalition, formed, in the year '93, against France. But the declaration of this Empress, in the year just mentioned, concerning the rights and duties of neutrals, immediately attracted the attention of Congress. The principles, announced in that instrument, though far from being complete or embracing the whole ground,\* were such as America would at once espouse; they were directly hostile to the system of Great Britain, and in that way were likely to produce a favourable influence on the war then waging between the mother country and the colonies. Congress did not delay to send a minister to Russia, for the armed neutrality presented an admirable occasion of attacking England in a vital organ. Another method of expressing their approbation of the principles of that confederacy was,

\* The armed neutrality left contrabands matter of conventional law, nor did it establish any regulations for vessels under convoy.



also, adopted. We copy from the Journal of October '80, the following paragraph :—"Congress, willing to testify their regard to the rights of commerce, and their respect for the sovereign who hath proposed, and the powers who have approved the said regulations : Resolve, That the Board of Admiralty prepare and report instructions for the commanders of armed vessels commissioned by the United States, conformable to the principles contained in the declaration of the Empress of all the Russias on the rights of neutral vessels."

Francis Dana, of Massachusetts, was elected, in December 1780, minister plenipotentiary to the court of St. Petersburg ; he was authorized to "*accede to the convention of the said neutral and belligerent powers for protecting the freedom of commerce and the rights of nations,*" and to propose a treaty of amity and commerce. This is the only instance in the history of the country, in which the United States volunteered themselves a party to a league of sovereigns in Europe ;—a proceeding that in consequence of the arrangements, that have succeeded the pacification of 1815, would, at this day, have excited an intense and profound interest. Still, the principles, adopted by the northern confederacy, were exceedingly grateful to the American government, and a proposal to join it was considered an effectual mode of hastening the acknowledgment of independence. It was, in reality, a league, both offensive and defensive, what its name purported it to be, an armed coalition, or in the modern phrase, "war in disguise." But even if the United States had been admitted to it, they were not in a condition, at that time, to furnish their quota of armament. England, at war with France, Spain, America, and shortly after Holland, regarded this coalition of the principal states of Europe with sullen silence ; she replied to the notes of the different northern powers, notifying to her the formation of the confederacy, with uncommon adroitness, and with all possible diplomatic address and formality. With the exception of Portugal, she had not a real friend left in the year '81, in either hemisphere ; and, with less power and wealth

to conduct and sustain the conflict, she was in a more desperate condition than in 1809.

Mr. Dana was neither received by the Russian court, nor was it officially known that he was at St. Petersburg, and as the empress had proposed to act a principal part in the mediation already mentioned, she could not consent to admit a minister from the United States. M. de Vergennes advised Mr. Dana not to appear in an official character, but to keep his commission secret, and to represent himself as a common traveller. This opinion he stated distinctly at a conference in April 1781, at Versailles. He was particularly urgent Mr. Dana should travel as a private citizen. The propriety of applying to foreign courts for aid and acknowledgment, before their views were privately and accurately ascertained, was, at this period, a subject of great discussion. Congress had given broad and indiscriminating directions on this head, and if the result of their applications should govern us, the proceeding must be considered, as by no means, injudicious. From Spain and Prussia we obtained the promise of assistance, in some cases actual aid, and with Holland we succeeded in concluding a treaty at so early an hour, as to compel her to become a party to the general war. We do not intend to intimate that this contest was to be waged by negotiation alone. As to that matter, the opinion of Mr. Izard, expressed in a letter of December 1777, is undoubtedly correct. "The establishment of our liberties must depend on our own exertions. One successful battle will gain us more friends, and do our business more effectually than all the skill of the ablest negotiators." But in all such great conflicts that, in reality, affect the interests of the civilized world, it is not easy to separate some portion of negotiation from the actual fighting. Aid in money or arms will always be needed, and it is desirable to conciliate the favourable opinions of the bystanders, or, at the least, to prevent them from joining with the enemy. Mr. Adams made, as it appears to us, a just remark on this subject, in a letter written in April 1781. "America has been too long silent in Europe. Her cause is that of all nations and all men, and

it needs nothing, but to be explained, to be approved. It was no dishonour to us to propose a treaty to France, nor for our ministers to reside more than a year there without being acknowledged. On the contrary, all wise men applauded the measure, and I am confident, the world will, in general, approve an application to the maritime powers." It seems, however, that Franklin entertained a different opinion. "It would have been better, if we had never issued commissions to the courts of Spain, Vienna, Prussia, Tuscany and Holland, till we had first privately learnt whether our agents would have been received, since a refusal from one is an actual slight, that lessens our reputation, and makes others less willing to form connexions with us." This remark cannot be considered altogether just or appropriate, after it was known in Europe, that France had formed an alliance, offensive and defensive, with the colonies. That single acknowledgment invested us with a full right to make applications to other courts.

Mr. Dana was well recommended to the Marquis de Verac, the French envoy at St. Petersburg, who rendered him essential services, and who, by the direction of his court, communicated all the proceedings of the American Congress to the Russian government, concerning the armed neutrality. On our first appearance at the courts of Europe, France acted truly the part of a friend and protector, and if she did not succeed in obtaining for our commissioners a diplomatic introduction, her ministers were ever ready to assist them with counsel and to remove some of the feeling of gloom and depression their feeble, solitary situation necessarily inspired. It is idle and thoughtless now to enquire into the motives that led to this conduct;—good or bad, the value of these kind offices was not the less sensibly felt at the time.

Mr. Dana arrived in St. Petersburg in September 1781, and, without delay, communicated his commission to M. de Verac; but he received from this minister, an accomplished, amiable man, little encouragement to proceed in the business of his mission.

"From the first moment, that hostilities took place," said M. de

Verac, in a letter of Sept. 2, 1781, "this Sovereign has made it a point of honour to hold the balance perfectly equal between the two parties. In this state of things, it is very doubtful, whether the minister of her Imperial Majesty would consent to recognise the minister of a power that, in her eyes, does not yet possess a political existence, and to expose herself to the complaints, that the court of London would not fail to apply to a mark of favour so public. I must, therefore, beg you to reflect carefully on the subject of exhibiting your public character. I do not now, sir, speak as a public minister, but as an individual, to whom a residence of twelve months has given a knowledge of local matters impossible for you to have acquired. If, however, you succeed in compassing the first difficulty, and open a negotiation with the Russian minister, and will do me the honour to inform me of the circumstance, rest assured that I shall very willingly second you in every thing, that relates to the common interest of the two countries. Allow me to add, that neither Count Panin nor Count Ostermann understand English, which will make your communications with those ministers somewhat difficult."

Not being altogether satisfied with his position, Mr. Dana intimated to M. de Verac, that he had determined to communicate confidentially to the Russian Minister of Foreign Affairs his letter of credence, accompanied with a memorial\* on the state of the colonies, and their prospects. But he was dissuaded from the undertaking on the ground, that the answers of Spain and France to the proposed mediation were hourly expected. In short, all Mr. Dana's proposals to address himself directly to the Russian government, were resisted by the French minister, who constantly said that every attempt would be unavailing till a peace.

It is not easy to explain the motives of the diplomatists of the time of M. de Vergennes. Much of the old system of extreme, apparent secrecy and profoundness still remained. The game seems to have been made as complicated as possible in order to excite greater pleasure in those who played. To accomplish a simple operation in an open, direct

\* This memorial was afterwards sent.

way, was accounted an instance of conscript awkwardness and imbecility. The press has destroyed diplomacy. No state secrets can be concealed from the editors of newspapers, nor can the influence of that agent, when once fairly established, be resisted or controlled by any other power. Armies, navies, inquisitions, bastilles, gendarmeries, make a formidable figure in history, but they possess little of that elastic, ceaseless, instantaneous, penetrating and universal influence and authority, that belongs to the press, the most extraordinary instrument of power yet known in the moral or physical world, reproducing itself at every moment, in every shape and in every place, endowed with immortal youth and life, incapable either of permanent abuse or corruption, because containing within its own bosom the certain and entire cure and remedy of its own diseases. An Italian minister in London, in 1763, took all the morning public prints, and very carefully and industriously extracted, and sent to his own court, every article of an amusing or instructive description, always beginning his despatches, "I have found out," &c.

France, very soon after she plunged into this war with England, appeared to have become heartily tired of it. She made one direct effort to obtain a peace, and finally, by the acknowledgment of her own statesmen, put an end to the war in a hasty manner. She might have been, therefore, apprehensive that if America succeeded in procuring assistance or countenance from Russia, she would be disposed to hold out longer for better terms, or France might have been unwilling to share with any other nation the commercial advantage expected from a monopoly of American trade. It seems, also, to have been the opinion of Mr. Dana that his Christian Majesty did not stand well at the court of the empress.

"The Russian ministers are in general anti-Gallicans, and have since the exit of Count Panin sought to divide or lessen the enemies of Great Britain. Hence the most extraordinary proceedings to bring, or rather to drive the United Provinces into a separate peace with England, (which have not yet ceased) and hence, also,

the patient acquiescence in her attempt to make a particular peace with the United States, though repugnant to the propositions of the mediating Courts. I believe they would have been well pleased, not only that their partial mediation between Holland and Great Britain had succeeded, but that the United States, as an independent nation, had made their own peace with Great Britain and left her to contend with the House of Bourbon alone.”\*

In the mean time, Mr. Dana remained in St. Petersburg, entirely guided in his steps by the counsels of M. de Verac. But having heard, first, of the signing of the preliminary, and, then, of the definitive articles, he communicated in Feb. 1783, a copy of his commission to Count Ostermann, accompanied by the following letter :

“I have the honour to inform your Excellency, that the United States of America, in Congress assembled, have thought fit to appoint a minister to reside near her Majesty, the Empress of all the Russias, and have furnished me with a letter of credence for that purpose. Convinced of the justice of their cause, and confiding entirely in that exact neutrality, which her Imperial Majesty had been pleased to declare, with a dignity, becoming her character, she should make the invariable rule of her conduct, unless compelled to depart from it in maintenance of the rights of the Imperial Crown, and of her subjects—the Congress, my Sovereigns, have expressly commanded me to delay the communication of my mission, till the course of events should prepare the way for it, without the least infraction upon the system adopted by her Imperial Majesty, by which she has acquired so much glory to herself. In the sentiment that that moment has now arrived, I take the liberty to request the honour of an audience of your Excellency, to the end, that I might present to you a copy of my letter of credence to her Imperial Majesty.”

To this letter no attention having been paid, he addressed to the same department a copy of it in the following April. Shortly after this second application, Mr. Dana received an invitation from the Vice Chancellor, requesting his attendance at the office. At this interview he was informed that

\* Letter of Mr. Dana, of Oct. 14, 1782.

both letters had been presented to the Empress, but she declined to receive him, till the Definitive Treaty was ratified. The Empress, also, observed, that as his letter of credence had been signed before the acknowledgment of independence by Great Britain, another instrument, prepared in due form, since that event, had become necessary, and that she, also, thought proper to wait till Great Britain had given the example of receiving a minister from the United States. These terms, hastily proposed, and probably without reference to their application,—rather for the sake of excusing themselves to Mr. Dana than in the way of argument, were really more severe than England herself exacted. They amounted to this, strike off seven years of your independence, confess that you owe your independence to the English acknowledgment—annul all acts of sovereignty prior to that time—all commissioners and ministers—treaties with France and Holland—and then you will be in a condition to present yourself at the Court of St. Petersburg. But the mother country treated with us in all formality before she had acknowledged our independence.

Mr. Dana having passed nearly a year in Russia, never having been presented at Court, and not seeing the least prospect of attaining a single object of his mission, left St. Petersburg in August 1783, for the United States. It was a long interval before that Court was again visited by an American minister.

Russia does not seem, at that time, to have been much disposed to acknowledge the independence of the United States, or to take any measures that should bring the war to a close. It appears to have been her policy to weaken France and England, on account of the ambitious designs Catharine had on Poland, and to render them incapable of counteracting her projects concerning the Turks. Mr. Dana in a letter, dated April '82, observes that the acknowledgment of the independence by the United Provinces was ill received at St. Petersburg; and Franklin relates an amusing story of the Count du Nord, afterwards the Emperor Paul,



that affords some illustration of the views of the empress, though an affair of mere etiquette :

"The Comte du Nord, who is son of the empress of Russia, on arriving at Paris, ordered, it seems, cards of visit to be sent to all the foreign ministers. One of them, on which was written, *Le Comte du Nord et le Prince Bariatinski*, was brought to me: It was on Monday evening last. Being at court the next day, I enquired of an old minister, my friend, what was the etiquette, and whether the Comte received visits. The answer was, *Non, on se fait écrire. Voilà tout.* This is done here by passing the door, and ordering your name to be written in the porter's book. Accordingly, on Wednesday, I passed the house of prince Bariatinski, ambassador of Russia, where the Comte lodged, and left my name on the list of each. I thought no more of the matter. But this day, May 24, comes the servant who brought the card, and in a great affliction, saying he was like to be ruined by his mistake in bringing the card here, and wishing to obtain from me some paper, of I know not what kind, for I did not see him. In the afternoon came my friend, M. le Roy, who is, also, a friend of the prince's, telling me how much he, the prince, was concerned at the accident,—that both himself, and the Comte had great personal regard for me and my character, but that our independence not yet being acknowledged by the court of Russia, it was impossible for him to permit himself to make me a visit as a minister. I told M. le Roy, it was not my custom to seek such honours, though I was very sensible of them, when conferred on me; that I should not have voluntarily intruded a visit, and that in this case I had only done what, I was informed, the etiquette required of me. But if it would be attended with any inconvenience to prince Bariatinski, whom I much esteemed and respected, I thought the remedy was easy,—he had only to erase my name out of his book of visits received, and I would burn their card."

Peace having been made with England, Congress discovered at once, that they were about to be entangled in a troublesome alliance, likely to lead to fresh quarrels.\* The

\* "ST. PETERSBURG, 13th June 1783.

"Hon. R. R. Livingston, Sec'y. Foreign Affairs.

"The flag of the United States is now displayed at Riga, upon a ship of 500 tons, commanded by a Captain McNiell belonging to Mas-

project of a Russian treaty, and of acceding to the armed neutrality, were soon brought under consideration. The country had just accomplished its own independence, but it was not at all in a condition to enter into other wars, and though the doctrines of the northern league were cheerfully and readily adopted, the nation was not prepared to defend them by force of arms. It is true, all the powers of Europe were opposed in this business to Great Britain, and if circumstances had compelled the parties to proceed to hostilities, the U. States could hardly have expected much share in it, or much disaster or disgrace. Not only America required a long rest at this moment; but the prospect of a general war, from which she should be exempted, gave her hopes of immediately appropriating to herself a valuable and profitable commerce. She appeared even then to be entering upon that career, which, in the course of fifteen years, was developed to her view, and that laid the foundation of her present great wealth with such rapidity and solidity. The continental Congress created for the sole purposes of war, and that had governed the country only during a war, was at that early hour deeply impressed with the necessity and wisdom of neutrality. The advantages of the remote and peculiar situation of this continent were not unheeded; the habits of the people were commercial; there were then no manufactories, and some of those articles, that have since become the staples of the country, were either unknown or little cultivated, having been discouraged by the colonial system of the mother country. With the great extent of sea coast, and materials for ship building, the government readily perceived the remarkable benefits the Americans would derive from becoming the carriers of the old world; they looked to commerce not only to enrich the nation, but to pay the debts of the war.

sachusetts, who arrived there on the 1st inst. from Lisbon with salt, an article permitted in that port though prohibited here. This is the only arrival of any American vessel for any part of this empire.

"FRANCIS DANA."

The subject of neutrality was discussed with attention and anxiety by Congress, during the spring and summer of '83, before it was known in America that the armed neutrality had been dissolved on the restoration of a general peace. The votes and resolutions only remain to us, but the outlines of the system, adopted by the first administration under the Federal constitution, and which has rendered it equally illustrious and worthy of all imitation, are at that period quite perceptible. The fame, perhaps, of that administration does not so much rest on having been the author of a system of neutrality, as having maintained it during a season of unexampled trial and most unexpected difficulties. The policy belongs to the geographical situation of the country, to the form and character of the government ; and the necessity and utility of it were as much felt in the confederation, as they have since been. We find, for example, as early as May '83, the following resolution adopted by Congress : " That though Congress approve the principles of the armed neutrality, founded on the liberal basis of a maintenance of the rights of neutral nations, and of the privileges of commerce, yet they are unwilling at this juncture to become a party to a confederacy, which may hereafter too far complicate the interests of the United States with the politics of Europe, and, therefore, *if such a progress is not yet made in this business as to make it dishonourable to recede, it is their desire that no further measures may be taken at present towards the admission of the United States into that confederacy.*" A resolution, which is in reality the foundation of the whole policy of the United States from that day to the present. Mr. Dana had not entered into any arrangements, that could at all involve the United States ; for he had never been invited to accede to that convention. But when peace was concluded with England, as it was not precisely known what stipulations he might have made with Russia, some anxiety was felt, lest the faith of the United States might be pledged. The general peace, however, entirely released America from the difficulties and dangers of this situation, for the "neutrality" expired with the war. Though the northern con-

federacy had been dissolved, a considerable degree of uneasiness still prevailed on the same subject, particularly in the government of the United Provinces. That government was desirous of forming another coalition, and propositions to that effect were made to the American ministers at Paris. The United States, having escaped from the embarrassments of one league, though, as it turned out, no ill could have befallen them under any circumstances, took the first opportunity to give instructions on that head to their ministers in Europe, and to repeat, in a decided manner, their sense of the propriety of a perfect neutrality :

"Whereas the primary object of the resolution of October 5th, 1780, and of the commission and instructions to Mr. Dana relative to the accession of the United States to the neutral confederacy, no longer can operate ; and as the true interest of these states requires that they should be as little as possible entangled in the politics and controversies of European nations, it is inexpedient to renew the said powers either to Mr. Dana, or to the other ministers of these United States, in Europe ; but, inasmuch as the liberal principles, on which the said confederacy was established, are conceived to be in general favourable to the interests of nations, and particularly to those of the United States, and ought in that view to be promoted by the latter, as far as will consist with their fundamental policy,—Resolved, that the ministers plenipotentiary of these United States, for negotiating a peace, be, and they are hereby instructed, in case they should comprise in the definitive treaty, any stipulations amounting to a recognition of the rights of neutral nations, *to avoid accompanying them by any engagements, which shall oblige the contracting parties to support those stipulations by arms.*"

This country has no complaints to make against Russia for oppressions on its trade in Europe. In regard to commerce, however, and the rights of neutrals, the interest of Russia is much the same as that of America. We have always seen Russia take a principal part in all the leagues, or conventions, for the protection of neutral trade and navigation. She depends principally upon the commerce of other nations for a supply of colonial, and other foreign articles, and for the ex-

portation of the vast quantity of raw materials, produced by her. She has been an advocate, in time of war, for the greatest possible indulgence and relaxation in regard to neutrals.—The commercial intercourse of Russia and the United States first led to an exchange of ministers. This government having received an intimation that the court of St. Petersburg was desirous of instituting a diplomatic connexion, appointed, in June 1809, Mr. John Quincy Adams, minister plenipotentiary to Russia, a courtesy soon after acknowledged by the arrival, in this country, of count Pahlen, a minister of equal rank. No other minister was appointed, on the part of the United States, before Mr. Bayard, after the peace of Ghent with England, but Russia was represented here by M. de Daschkoff, as envoy extraordinary and minister plenipotentiary.

In 1813, Russia offered her mediation in a friendly manner, to procure a peace between the United States and Great Britain. She was at that time closely leagued with England in the last and sixth celebrated coalition against France. Notwithstanding this circumstance, the trade of the Baltic was exceedingly embarrassed, and, in the language of M. de Daschkoff, "his imperial majesty saw, with infinite regret, the great shackles which this new episode (war of 1812) is about to oppose to the commercial prosperity of nations." "The peace of Russia with England, seemed to present this immense advantage to the commerce of nearly all sea faring people, that it freed their relations from that constraint, from that continual vexation, to which it had been subjected for many years without interruption." The mediation, as has been said, was declined by Great Britain.

## CHAPTER XII.

## RELATIONS AND TREATY OF 1827 WITH DENMARK.

*No diplomatic intercourse—Letter of Rosencrone to Franklin—John Paul Jones sent to Copenhagen—Erving sent to Denmark in 1811—Account of spoliations—French and Danish privateers—Captures—Convoy cases—New aggression on neutral rights—Remarks on that subject—None of the condemnations of 1809, 1810, revised—Convoy cases not restored—Erving leaves Copenhagen—Treaty of 1826—Provisions—Wheaton charged to Copenhagen—Settles the Claim.*

AMERICA has never had a regular diplomatic intercourse with Denmark ; though some vexatious circumstances, that at first excited great uneasiness, made it necessary to send, in 1811, a special commissioner to that country.\* Denmark has been celebrated for her defence of the rights of neutrals, and she has taken an active part in the leagues that have been formed for that purpose. Though the Danish navy has never been great, the peculiar situation of that country, at the mouth of the Baltic, if it has not given her

\* Denmark has had diplomatic agents in this country, embracing, however, we believe, also, a commercial character. In 1801, Mr. Blicher Olsen was minister resident and consul general ; in 1803, Mr. Peter Pedersen was a chargé, also, with commercial functions, and latterly the same individual has become a minister resident and consul general. A "minister resident" is usually considered as of the third order of diplomatic functionaries, though, never having seen any of the powers or credential letters, with which the Danish agents are invested, we are not precisely aware of the nature of their commission, though, we believe, it does not extend to what is usually called negotiation ;—beyond the making or receiving certain official communications. On the subject of consuls, all necessary information will, we believe, be found in the work on consular establishments, of Mr. D. B. Warden, late consul general of the United States at Paris.

the control, has, at least, put it in her power to harass the trade bound to the territories, bordering on those waters. Having possession of the passes or straits, that connect the Baltic and German seas, Denmark has asserted pretensions, not easily justified by the laws of nations, though consecrated by a very ancient custom. But her general treatment of neutral commerce has not been oppressive, though the United States have, undoubtedly, had cause to complain; —Danish and French privateers have committed acts of unwarrantable aggression on our commerce; unjust condemnations have taken place in her tribunals, and our seamen have been treated in a tyrannical way in her ports. On the other hand, few of the powers of Europe have been in a condition so weak and precarious, during the wars of the French revolution; accessible to the English by water, and to the French by land, the capital of Denmark has been twice taken by one belligerent within the century, and her whole fleet carried to England. Her territory and islands being occupied by French troops, Denmark was forced at an early hour into the continental system, which she executed with uncommon rigour; and in the autumn of 1807, England declared a war against her, that did not terminate till the treaty of Kiel, of 1814. Denmark was neither in a state to resist singly either of the belligerents, nor did her situation at the mouth of the sound make it possible for her to preserve even the appearance of neutrality. The government was compelled to take side with France, both from the superiority of the French armies, and because the allies refused peace to the crown prince on any other terms than the transfer of Norway to Sweden.

Before speaking of the grievances, suffered by this country during the continental system, we shall take an opportunity to introduce a letter written in 1783, by the Danish minister Rosencrone on the subject of a commercial convention, chiefly on account of the importance, that justly belongs to all the diplomatic events of that period in which America was engaged. In '82 and '83 a brief conversation took place between Dr. Franklin and M. de Walsterstorff, a diplomatic



agent of Denmark at Paris, concerning a treaty of commerce, and at the request of the latter, a copy of the usual draught was sent by the American envoy to the minister at Copenhagen. In reply, he wrote, as follows, to the agent at Paris:

"Copenhagen, Feb. 22, '83.—As I know you are on the point of making a tour to France, I cannot omit warmly recommending to you to endeavour during your stay at Paris, to gain, as much as possible, the esteem and confidence of Dr. Franklin. You will recollect what I said in my conversations with you of the high respect all the king's ministry have for that minister. You have witnessed the satisfaction, with which we have learned the glorious issue of this war for the United States, and how fully we are persuaded that it will be for the general interest of the two states to form, as soon as possible, reciprocal conventions of commerce and friendship. Nothing certainly would be more agreeable to us than to learn by your letters that you find the same dispositions in Dr. Franklin, and in that case it seems to me that the shortest mode of accelerating these new connexions would be to take the treaty between the Congress and the States General for the basis, and that Mr. Franklin should communicate his ideas on the changes or additions, which he thought reciprocally useful in the treaty of commerce Congress might conclude with us."

Franklin transmitted a copy of this letter to the President, and speedily received information that Congress would undoubtedly empower some one to make the treaty.

"November 1783"—Dr. Franklin writes—"the conclusion of the Danish treaty waits only for the commission and instructions from Congress." The negotiation, however, appears to have failed in consequence of the seizure by Denmark of three prizes, carried by the Americans into Bergen in Norway. And it was for the purpose of settling this claim of the Americans that John Paul Jones was despatched in February 1788, to Copenhagen.

The vexations, of which this country had to complain, took place from 1809 to 1812. They were the consequences of the political situation of Denmark; openly at war with England, forced to adopt the continental system, to admit French troops into her territories and French priva-

teers into her ports. The government, however, still remained entirely sovereign, and to all appearances independent. In consequence, the claim of the United States was, immediately on the Danish government, for injuries committed by her subjects, and the subjects of her ally, apparently within her control. The principle of this demand differed from that of the Neapolitan and Netherlands; for in those cases, the depredations were confessedly committed by the new French dynasties,—but the original governments, having been restored, assumed in principle, the debts, as well as the power and revenues of the revolutionary ones.

The United States, having no diplomatic agent in any part of the Danish dominions, George W. Erving was sent, in 1811, special minister to Copenhagen, for the purpose of asserting the claims of the government, and of obtaining a discontinuance of the irregular proceedings of the French and Danish privateers. He received his audience from the minister of state, M. de Rosenkrantz, in June of the same year. During 1809 and 10, it appears, that 160 American vessels had been captured by the Danes; and in the subsequent years, there had been numerous captures by French privateers. In general these vessels had valuable cargoes. Of the captures, 42 had been condemned; and of the condemned, 16 were cases that had either violated the laws of the United States, such as the embargo and nonintercourse, or had forged certificates of origin, or in other respects were not legitimate. Many of these vessels were carried into Christiansand, in Norway. A principal item in the captures was, what has been called the convoy cases. We are not aware, that similar violations of the neutral rights of this country have ever before occurred; and as they affect an important provision of the laws of nations, we shall give an account of this business, and the representation concerning it, in Mr. Erving's own words:

“With my note of yesterday, I transmitted to your excellency a list of the “convoy cases,” twelve in number; the two last in that list are now depending on appeal before the high court, as is mentioned in a memorandum opposite to their names; the first eight

vessels of the remaining ten were bound immediately from Petersburg and Cronstadt to the United States; they had all paid their sound dues, and several of them had been examined before the Danish marine tribunals, on entering the Baltic; and they were all arrested, in going out, by a British force, and compelled to join convoy. When that convoy was attacked by his Majesty's gun brigs, the Americans, not conscious of any illegality in the nature of their voyages, or of any irregularity in their own conduct, made no efforts to escape, and were captured and brought into port. These vessels have been condemned under the authority of the article 'D' in the 11th clause of his majesty's instructions for privateers, issued on the 10th of March 1810, which declares to be good prize "all vessels which have made use of British convoy, either in the Atlantic or the Baltic." At the time of this declaration, these vessels were in Russia, on the point of sailing, and wholly ignorant of it."—"That the belligerent has a right to ascertain the character of neutrals met with at sea, I am not disposed to deny; but to say that the neutral shall be condemned on the mere fact that he was found under enemy's convoy, is to impose upon him a necessity of sailing without protection, even against his own separate enemies; for the case might well happen, indeed has happened, that though neutral with regard to the belligerent powers, he has had an enemy, against whom either of the belligerents might be disposed to protect him. Of such protection, the American commerce has often availed itself, during the war between the United States and the Barbary powers; nor was it ever supposed, by either of the great belligerent powers, that such commerce, so protected by its enemy, had thus become liable to capture and confiscation. The case might also occur, that of two allied belligerent powers, a third power should be enemy as to one, and neutral as to the other. I state these arguments against the broad ground taken in the royal instructions above quoted. But it will be said, that the belligerent, having also an unquestionable right to ascertain the neutrality of vessels, and belligerent rights being paramount to neutral rights, where the two happen to be in collision,—hence the attempt of the neutral to deprive the belligerent of his right, by putting himself under convoy, forms of itself a ground of capture and confiscation. To this I answer, first, that the belligerent rights, where they come in collision with those of

neutrals, are not to be deemed in all cases paramount; and that nothing can establish such a general rule but force, which is not law or justice. Secondly, that no presumption necessarily arises against the neutral, from the mere circumstance of his being found under enemy's convoy; but that this point will depend upon the peculiar circumstance of each case. Thirdly, that where the belligerent and neutral rights conflict, all other circumstances being equal, the plea of necessity ought to decide the question in favour of the neutral. In the case supposed, the belligerent is seeking the mere exercise of a right, but the neutral is occupied in his self preservation. These vessels did not seek convoy for any purpose, but they were forced into it; they had no motive to seek convoy as a protection against Danish cruisers. They had, indeed, other inducements to put themselves under convoy; the decrees of his majesty the emperor of France being then in force, that system, working against the English orders in council, produced such a state of things, with regard to the commerce of America, that scarcely one of its ships could move on the face of the ocean, without being exposed, under this unfortunate cooperation of hostile systems, to capture and confiscation. But, had this happened in the cases before us, yet it would not have formed a just ground of capture and confiscation; for, the merits or demerits of the Berlin and Milan decrees out of the question, those decrees have not been adopted by Denmark; indeed, at the time the vessels were taken, his majesty had not assumed any course, with respect to the American commerce, from which evil was to be apprehended; hence, I beg leave to repeat, that the vessels in question cannot be presumed to have sought protection under British convoy, for the purpose of avoiding his cruisers. But if the contrary had been proved, if it stood confessed, that they had sought convoy against Danish cruisers; in that case, they would have been liable to capture, certainly,—but it is equally certain, that they would not have been liable to condemnation. I must again totally deny, that the rule laid down in the article of the royal instructions above cited, is supported by any principle to be found in the law,—and I can confidently ask your excellency to show me any authorities in its favour. If the writers be silent on the subject, then their silence is to be construed favourably for the neutral. But the law says, that neutral goods found under the enemy's forts, within his territory,

or even on board his vessels at sea, which is to be as immediately and totally under his protection as is possible,—that these are not liable to confiscation, but shall be restored to the neutral owners. The doctrine laid down by Grotius, in the “*De Jure Belli ac Pacis*,” on this point, has never been refuted, but has, on the contrary, been adopted by subsequent writers. England herself has never gone to the extent of condemning vessels upon the mere ground of their having been taken under enemies’ convoy; but she has captured them in that situation, and acquitted them.”

These vessels were condemned by the Danes, on the pretence, either that the property was English, the papers false, or that pretended certificates of origin were shown as given by the French consuls in America, when the French government had caused official notice to be given to the Danish government, on the 22d of September 1810, that the French consuls were forbidden from furnishing certificates. But upon proof being presented, that the French consuls in America did actually give certificates, till the 13th of November, the Danish government immediately released all vessels furnished with them of a prior date.\* As to the convoy cases, the Danish government considered, that this circumstance deprived them of their original character of neutrality. “He who causes himself to be protected, by that act ranges himself on the side of the protector, and thus puts himself in opposition to the enemy of the protector, and evidently renounces the advantages attached to the character of friend to him, against whom he seeks protection. If Denmark should

\* Official statement of June 23, 1811.

Captures in 1809,	-	-	-	38	} Danish islands.
Condemnations,	-	-	-	12	
Captures in Norway in 1810,	-	-	-	36	
Pending of do. in High Court, 8, and not one finally condemned.					
Captures in Danish islands, in 1810,	68				}
Condemnations,	-	-	-	22	
Pending,	-	-	-	6	
Convoy cases, (1810),	-	-	-	18	}
Condemned,	-	-	-	8	
Pending,	-	-	-	10	
Total captures in 1809, 1810,	-	-	-	160	

abandon this principle, the navigators of all nations would find their account in carrying on the commerce of Great Britain under the protection of English ships of war, without running any risk. We every day see that this is done, the Danish government not being able to place in the way of it sufficient obstacles." To this arbitrary, and obviously most unjust doctrine, the American government could never accede. But Denmark still continued to enforce it; and not only the vessels, already condemned, were not released, but all captures of American vessels, under English convoy, were held to be legal. Great difficulties having arisen in the examination of the cases as to jurisdiction, the French government proposed, that the prizes, taken by privateers with French commissions, should be transferred to Paris. But to this the Danish government would not consent. None of the vessels condemned in 1809 or 1810 were released. No further interruption being given to American commerce in the Baltic, and no hope remaining that the condemned cases would be revised, Mr. Erving left Copenhagen in April 1812, for Paris, leaving Mr. Forbes as an agent for the American claims. On the whole, this business terminated more favourably than could have been expected. The Danish government conducted with more justice than most of the other European states against whom this country has claims, the condemnations being few in proportion to the captures. We cannot doubt, that some illegal trade was carried on under the American flag at that time. Indeed, we are officially informed of that fact, in a memorial of American ship masters in 1809, who had been taken and carried into Christiansand.

In April 1826 Mr. Clay, secretary of state, negotiated at Washington with the Chevalier Peter Pedersen, the Danish minister resident, a convention to regulate the trade, and navigation of the two countries. It is on the principle of reciprocity of tonnage and importation duties and charges with the exception of certain possessions belonging to Denmark;—we give the principal provisions in a note.\*

\* "ART. 2. The contracting parties being likewise desirous of plac-

Mr. Pedersen left this country after the ratification of this convention, when he was succeeded by Stein Bille, a chargé d'affaires. In 1827 Henry Wheaton of New-York, was ap-

ing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens and subjects of each may frequent all the coasts and countries of the other, (with the exception hereafter provided for in the sixth article) and reside and trade there in all kinds of produce, manufactures and merchandise; and they shall enjoy all the rights, privileges and exemptions, in navigation and commerce, which native citizens or subjects do, or shall enjoy, submitting themselves to the laws, decrees and usages, there established, to which native citizens or subjects are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties, respectively, according to their own separate laws.

"ART. 3. They likewise agree that whatever kind of produce, manufacture, or merchandise, of any foreign country, can be, from time to time, lawfully imported into the United States, in vessels belonging wholly to the citizens thereof, may be also imported in vessels wholly belonging to the subjects of Denmark; and that no higher or other duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other. And, in like manner, that whatever kind of produce, manufacture, or merchandise, of any foreign country, can be, from time to time, lawfully imported into the dominions of the King of Denmark, in the vessels thereof, (with the exception hereafter mentioned in the sixth article) may be also imported in the vessels of the United States; and that no higher or other duties upon the tonnage of the vessel or her cargo shall be levied and collected, whether the importation be made in vessels of the one country or of the other. And they further agree, that whatever may be lawfully exported or reexported, from the one country in its own vessels, to any foreign country, may in like manner, be exported or reexported in the vessels of the other country. And the same bounties, duties and drawbacks, shall be allowed and collected, whether such exportation or reexportation be made in vessels of the United States or of Denmark. Nor shall higher or other charges of any kind be imposed, in the ports of one party, or vessels of the other, than are, or shall be, payable in the same ports by native vessels.

"ART. 4. No higher or other duties shall be imposed on the importation into the United States of any article, the produce or manufac-



pointed a chargé to Denmark. We understand, Mr. Wheaton has succeeded in making an arrangement, by which all claims on that country have been settled.

ture of the dominions of his majesty the king of Denmark; and no higher or other duties shall be imposed on the importation into the said dominions of any article, the produce or manufacture of the United States, than are, or shall be payable on the like articles, being the produce or manufacture of any other foreign country. Nor shall any higher or other duties or charges be imposed in either of the two countries, on the exportation of any articles to the United States, or to the dominions of his majesty the king of Denmark, respectively, than such as are, or may be, payable on the exportation of the like articles to any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles, the produce or manufacture of the United States, or of the dominions of his majesty the king of Denmark, to, or from, the territories of the United States, or to or from the said dominions, which shall not equally extend to all other nations.

"ART. 5. Neither the vessels of the United States nor their cargoes shall, when they pass the Sound, or the Belts, pay higher or other duties than those which are or may be paid by the most favoured nation.

"ART. 6. The present convention shall not apply to the northern possessions of his majesty the king of Denmark; that is to say, Iceland, the Ferroé Islands, and Greenland, nor to places situated beyond the Cape of Good Hope, the right to regulate the direct intercourse with which possessions and places is reserved by the parties respectively. And it is further agreed that this convention is not to extend to the direct trade between Denmark and the West India colonies of his Danish majesty, but in the intercourse with those colonies, it is agreed that whatever can be lawfully imported into or exported from the said colonies in vessels of one party from or to the ports of the United States, or from or to the ports of any other foreign country, may, in like manner, and with the same duties and charges, applicable to vessel and cargo, be imported into or exported from the said colonies in vessels of the other party.

"ART. 7. Both parties may dispose of their effects or remove them on paying the usual duties of their respective nations.

"ART. 8. Consuls and Vice Consuls.

"ART. 9. Rights, privileges, &c. of the same.

"ART. 10. Concerning Consuls.

"ART. 11. Convention to be in force for ten years."

## CHAPTER XIII.

## TREATIES OF 1783—1816—1828 WITH SWEDEN.

*Sweden, only power that voluntarily offered its friendship to Congress of confederation—No applications specially made to Northern Powers in early part of war—M. de Creutz offered in '82 to make a treaty—Treaty of Paris of '83—Provisions similar to that of Netherlands—No minister till 1813—M. de Kantzow—Jonathan Russell of Massachusetts—Demand for property confiscated at Stralsund—Relations friendly with Sweden—Russell makes treaty in 1816 with Sweden—Renews the subject of the claims—Correspondence—Settled by private contract—Mr. Hughes and Mr. Appleton, chargés—Treaty of 1827—Stuckelberg chargé from Sweden.*

SWEDEN is the only power in Europe, that, voluntarily, offered its friendship to the United States. Without being solicited, proposals were made for a treaty before the independence of the colonies was even recognised by Great Britain. A general authority was given to the commissioners abroad, Franklin, Adams, Jay and Laurens to conclude treaties of amity and commerce, but in the early part of the revolution war, Congress did not direct applications specially to be made to any of the northern powers. And most of the other courts, to whom agents were sent, either refused to receive them, or contrived, under some pretext or other, to avoid all appearance of giving aid or countenance to the American confederacy. This caution or indifference cannot be matter of censure or surprise. Few European courts probably thought, at the commencement of the revolution, that the colonies could prevail; few chose to take the risk of involving themselves in a maritime war with England. With the name of colonies, weakness and subjection were then naturally associated.

The conduct of Sweden was marked with frankness, and

with a very friendly character. America could not expect much aid from that country, or suppose that her example could have a great deal of influence on other nations. But it was highly gratifying that a state renowned as Sweden always has been, for the bravery and love of independence of her people, should manifest a sympathy in the arduous struggles for liberty of a distant country. The proposal for a treaty was entirely unsought for on the part of Congress. The only account, we possess of the transaction, is in one of the letters of Dr. Franklin. The Swedish minister at Paris, the Count de Creutz, called on him towards the end of June 1782, by the direction of his sovereign, Gustavus III., to enquire, if he was furnished with the necessary powers to conclude a treaty with Sweden. In the course of the conversation he remarked, "that it was a pleasure to him to think, and *he hoped it would be remembered*, that Sweden was the first power in Europe, which had voluntarily offered its friendship to the United States without being solicited." Dr. Franklin communicated the application of the Swedish envoy to Congress, and instructions were shortly after sent him to agree on a treaty. The treaty was concluded at Paris on the 3d April 1783, by Dr. Franklin with the Count Gustavus Philip de Creutz, and in its provisions it resembles others made, with the powers of Europe at that time.\*

\* The original treaty, consisting of 27 articles, to which five separate articles were added the same day, was limited to fifteen years. For its provisions and details we refer particularly to the treaty made with the Netherlands, in 1782.

"The king of Sweden, of the Goths and Vandals, &c. &c. &c. and the thirteen United States of North America, to wit: New-Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New-York, New Jersey, Pennsylvania, the counties of Newcastle, Kent and Sussex, on Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, desiring to establish, in a stable and permanent manner, the rules which ought to be observed relative to the correspondence and commerce which the two parties have judged necessary to establish between their respective countries, states and subjects; his majesty and the United States have thought that they could not better accomplish that end, than by taking for a basis of their arrangements the

This is the only treaty we have with that country till 1816, but the most friendly relations have, however, been always maintained. The direct commerce to Sweden has

mutual interest and advantage of both nations, thereby avoiding all those burdensome preferences, which are usually sources of debate, embarrassment and discontent, and by leaving each party at liberty to make, respecting navigation and commerce, those interior regulations which shall be most convenient to itself.

"With this view, his majesty the king of Sweden has nominated and appointed for his plenipotentiary count Gustavus Philip de Creutz, his ambassador extraordinary to his most Christian Majesty, and knight commander of his orders; and the United States, on their part, have fully empowered Benjamin Franklin, their minister plenipotentiary to his most Christian Majesty: the said plenipotentiaries, after exchanging their full powers, and after mature deliberation in consequence thereof, have agreed upon, concluded and signed the following articles:

"ART. 2. Neither party to grant favours in commerce, &c. to other nations, that shall not become common to the other party.

"ART. 3. Subjects of Sweden not to pay higher duties, &c. in the ports of the United States, than the most favoured nations.

"ART. 4. Citizens of the United States not to pay higher duties in the ports of Sweden, than the most favoured nations.

"ART. 5. There shall be granted a full, perfect and entire liberty of conscience to the inhabitants and subjects of each party, and no person shall be molested on account of his worship; provided he submits so far as regards the public demonstration of it to the laws of the country. Moreover liberty shall be granted, when any of the subjects or inhabitants of either party die in the territory of the other, to bury them in convenient and decent places, which shall be assigned for the purpose; and the two contracting parties will provide each in its jurisdiction, that the subjects and inhabitants respectively may obtain certificates of the death, in case the delivery of them is required.

"ART. 6. Citizens of each country, to enjoy in that of the other the rights of devise, donation, and of inheritance, &c. without naturalization.

"ART. 7. Free trade allowed with an enemy. Free ships make goods. Persons, except soldiers in the actual service of an enemy, to be secure in free ships.

"ART. 8. This liberty of navigation and commerce shall extend to all kinds of merchandises, except those only which are expressed in

been quite inconsiderable, though during the commercial restrictions in Europe, a large amount of property was cleared for Swedish ports. The trade with the Swedish West In-

the following article, and are distinguished by the name of contraband goods:

"ART. 9. Under the name of contraband or prohibited goods, shall be comprehended arms, great guns, cannon balls, arquebuses, muskets, mortars, bombs, petards, grenadoes, saucisses, pitch balls, carriages for ordnance, musket rests, bandoliers, cannon powder, matches, saltpetre, sulphur, bullets, pikes, sabres, swords, morions, helmets, cuirasses, halberds, javelins, pistols and their holsters, belts, bayonets, horses with their harness, and all other like kinds of arms and instruments of war for the use of troops.

"ART. 10. These which follow shall not be reckoned in the number of prohibited goods; that is to say: all sorts of cloths, and all other manufactures of wool, flax, silk, cotton, or any other materials, all kinds of wearing apparel, together with the things of which they are commonly made, gold, silver coined or uncoined, brass, iron, lead, copper, latten, coals, wheat, barley, and all sorts of corn or pulse, tobacco, all kinds of spices, salted and smoked flesh, salted fish, cheese, butter, beer, oil, wines, sugar, all sorts of salt and provisions which serve for the nourishment and sustenance of man, all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sailcloth, anchors, and any parts of anchors, ship masts, planks, boards, beams, and all sorts of trees and other things proper for building or repairing ships; nor shall any goods be considered as contraband, which have not been worked into the form of any instrument or thing for the purpose of war by land or by sea, much less such as have been prepared or wrought up for any other use: all which shall be reckoned free goods, as likewise all others which are not comprehended and particularly mentioned in the foregoing article; so that they shall not by any pretended interpretation be comprehended among prohibited or contraband goods; on the contrary, they may be freely transported by the subjects of the king and of the United States, even to places belonging to an enemy, such places only excepted as are besieged, blockaded, or invested; and those places only shall be considered as such, which are nearly surrounded by one of the belligerent powers.

"ART. 11. In case of war with a third power, ships and vessels to be furnished with sea letters and certificates.

"ART. 12. Vessels, if required, shall exhibit their sea letters and certificates. Vessels not having contraband goods, may pass. Vessels

dia Islands has been greater than in ordinary times, but this has been nominally increased by employing her neutral ports

under convoy to pass without exhibiting papers, on the word of the commander of the convoy.

"ART. 13. In case of capture for carrying contraband to an enemy, the hatches, &c. not to be broken up at sea. The ship, &c. not to be affected by the contraband on board. On delivery of contraband by the master, the vessel may pursue her voyage. In cases of capture, where the goods are free, the captors to pay costs and damages.

"ART. 14. Goods found in an enemy's ship liable to be confiscated, unless put on board before the declaration of war, or within six months afterwards.

"ART. 15. Commanders of public and private armed vessels to be answerable in their persons and goods, for injuries done on either side.

"ART. 16. Every person fitting out a privateer, before he receives a commission, to give bond to answer all damages.

"ART. 17. Vessels, &c. of one of the parties, being neutral, recaptured by the other, to be restored on proof.

"ART. 18. Regulations respecting recaptures, &c. in case the two nations should be at war with a common enemy.

"ART. 19. The armed vessels of either party, allowed to enter and freely depart the ports of the other, with their prizes.

"ART. 20. In case of shipwreck, relief shall be afforded, and goods restored, on paying costs of salvage, if claimed in a year and a day.

"ART. 21. When vessels of either party shall be forced by stress of weather, &c. into ports, &c. of the other, they shall be protected, the persons on board treated with humanity, and freely permitted to depart.

"ART. 22. In case of war, nine months shall be allowed to citizens or subjects to sell, or to transport their effects.

"ART. 23. The citizens or subjects of each party not to take commissions, or letters of marque, from any prince or state, with whom the other is at war, to cruise against either party.

"ART. 24. Ships and vessels of either party coming on the coasts, or entering the ports of the other without wishing to unload, shall not be obliged to break bulk, &c.

"ART. 25. Armed vessels of either party visiting merchant ships of the other, under the right of search, to remain out of cannon shot, and to board only in a boat, with two or three men.

"ART. 26. Each party allowed to have consuls, &c. in the ports of the other."

for the purpose of intercourse with the British West Indies. This country had no minister at the Court of Stockholm till 1814, although Sweden was represented in the United States during a short time in 1813 by M. de Kantzow, a minister plenipotentiary, but who was soon withdrawn. In the beginning of 1814, Jonathan Russell, of Massachusetts, was appointed minister to the Court of Sweden; and in the autumn of 1816 he became engaged in a correspondence with the Swedish minister, Count d'Engerstron,\* concerning a sequestration of some American property. The French being in possession of Stralsund, in Pomerania, in 1810, placed this property at the disposition of Sweden, for whose benefit it was ultimately sold for about, we believe, 151,000 rix dollars currency of that country. Mr. Russell claimed an indemnity, but the demand was evaded or resisted in the same way that so many others have been by the European governments since the changes of 1814 and 1815.

During the commercial restrictions in our country, and in Europe, a great amount of property was shipped for Swedish ports, and many of our vessels sought protection there. When the passages leading into the Baltic were vexed to such a degree by French and Danish privateers, this property and the rights of these neutrals were respected. Though the Swedish territory runs along the Sound, we are not aware that any instance exists of illegal or oppressive conduct towards American vessels. From her comparatively remote situation, Sweden was less under the control of France during the restrictions on commerce than, perhaps, any other power on the continent. She was at war with that country from 1805 to 1810, when she was compelled to accede to the continental system, though on account of the nature of her western coast, it was, never, in reality enforced. But in the beginning of 1812, French troops occupied Swedish Pomerania, and shortly after, Sweden joined the coalition of England and Russia against Napoleon; so that, in fact, the commerce of the United States with Sweden was scarcely at all interrupted, ex-

\* We give the spelling of this name of the despatch. It is given in Schoell differently, d'Engstroem.



cept by the acts of our own government, during the eight years that preceded the downfall of the French Emperor.

Before giving an account of the treaty concluded in 1827 by Mr. Appleton, he chargé from this country, it is matter of great gratification, to remark that a settlement of the difficulty, that occurred in 1810, and which, on slight and insufficient pretences, was long deferred, has at length taken place, and that the treaty, recently concluded, is more in accordance with the tone and policy of our own government, in regard to commercial matters, than any formal arrangement, into which the United States have entered with any European power.

The history of Sweden, the character of the people, will long continue to awaken a pleasing interest; and for the ready, cordial and frank manner, in which she offered us her friendship at an early hour in our history, when, compared with the present situation of this country, we had little, indeed, to boast of that could attract or remunerate the notice and alliances of European governments, the nation, we trust, will never be insensible nor ungrateful. Sweden is not endowed with great power, capable of a direct application. Since the celebrated war of thirty years, and a short period during the extraordinary reign of Charles the 12th, she has not appeared with much authority in the field of European politics. But her moral influence, arising from the character and condition of her population, is far from being inconsiderable, and a favourable, geographical position offers her many of the privileges of neutrality, accompanied with the advantage of a neighbourhood to the most valuable markets of the old world. Even, when, after long delay and deliberation, she has been compelled to take her side, Sweden has usually acted the part rather of a reserved body, neither exposed to the greatest dangers or losses of the combat.

In October 1818,\* Mr. Russell renewed the discussion

\* Mr. Russell negotiated, September 4, 1816, a treaty of Commerce with the Counts d'Engerstroem and A. G. de Morner. This treaty consisted originally of 14 articles, two of which were not ratified. The ratifications were exchanged September 25, 1818, and being limited to

concerning the American property seized in 1810, at Stralsund, an interruption of the negotiation having occurred, in consequence of the attempts of a private agent to procure a

eight years, it, of course, expired September 1826. The following are the principal articles, together with a summary of the others :

"ART. 1. Reciprocal liberty of commerce. Complete protection for the merchants and traders.

"ART. 2. No other or higher duties, imposts, or charges, whatsoever, shall be imposed on the importation into the territories of his Majesty the King of Sweden and Norway, of the produce or manufactures of the United States, nor on the importation into the United States of the produce or manufactures of the territories of his Majesty the King of Sweden and Norway, than those to which the same articles would be subjected in each of the two countries, respectively, if these articles were the growth, produce, or manufacture, of any other country. The same principle shall likewise be observed in respect to exportation, in such manner that in each of the two countries, respectively, the articles which shall be exported for the other, cannot be charged with any duty, impost or charge, whatsoever, higher or other than those to which the same articles would be subjected if they were exported to any other country whatever.

"Nor shall any prohibition be imposed on the exportation or importation of any article, the growth, produce, or manufacture, of the territories of his Majesty the King of Sweden and Norway, or of the United States, to or from the said territories of his Majesty the King of Sweden and Norway, or to or from the said United States, which shall not equally extend to all other nations.

"Swedish or Norwegian vessels arriving in ballast, or importing into the United States the produce or manufactures of their countries, or exporting from the United States the produce or manufactures of said states, shall not be obliged to pay, either for the vessels or cargoes, any other or higher duties, imposts, or charges, whatsoever, than those which the vessels of the United States would pay in the same circumstances; and, vice versa, the vessels of the United States, arriving in ballast, or importing into the territories under the dominion of his Majesty the King of Sweden and Norway the produce or manufactures of the United States, or exporting from the territories under the dominion of his Majesty the King of Sweden and Norway, the produce or manufactures of these territories, shall not pay, either for the vessels or the cargoes, any other or higher duties, imposts, or charges, whatsoever, than those which would be paid if these articles were transported by Swedish or Norwegian vessels, respectively.

settlement. This undertaking failed ; and, though delay was the necessary result of the interference, there is no appearance that the claims would have been allowed on the

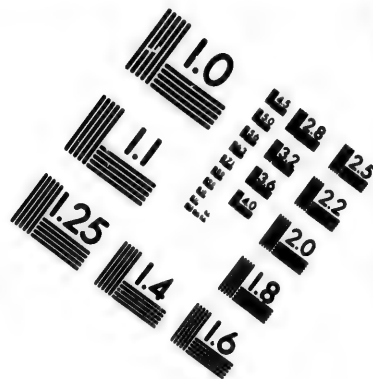
" That which is here above stipulated, shall also extend to the Swedish colony of St. Barthelemy, as well in what relates to the rights and advantages which the vessels of the United States shall enjoy in its ports, as in relation to those which the vessels of the colony shall enjoy in the ports of the United States, provided the owners are inhabitants of St. Barthelemy, and there established and naturalized, and shall have there caused their vessels to be naturalized.

" ART. 5. Proceedings against consuls, &c. offending against the laws.

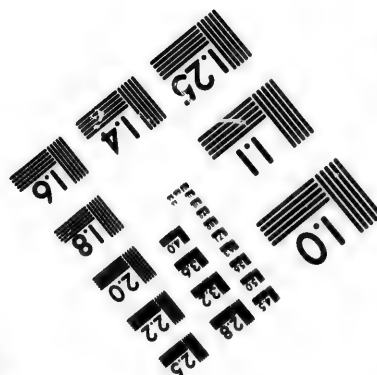
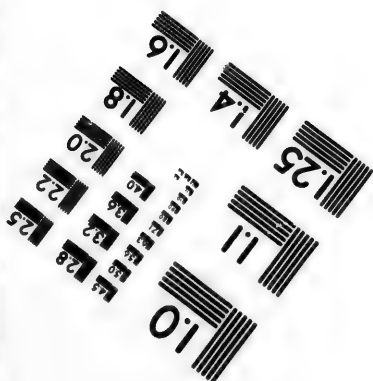
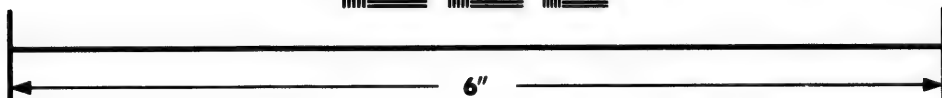
" ART. 7. The citizens or subjects of one of the contracting parties, arriving with their vessels on any coast belonging to the other, but not willing to enter into port, or being entered into port and not willing to unload or break bulk, shall have liberty to depart, and to pursue their voyage, without molestation, and without being obliged to render account of their cargo, or to pay any duties, imposts, or charges, whatsoever, on the vessels or cargo, excepting only the dues of pilotage, when a pilot shall have been employed, or those of quayage, or light money, whenever those dues are paid in the same circumstances by the citizens or subjects of the country. It being, nevertheless, understood, that whenever the vessels belonging to the citizens or subjects of one of the contracting parties shall be within the jurisdiction of the other, they shall conform to the laws and regulations concerning navigation, and the places and ports into which it may be permitted to enter which are in force with regard to the citizens or subjects of the country ; and it shall be lawful for the officers of the customs in the district where the said vessels may be, to visit them, to remain on board, and to take such precautions as may be necessary to prevent all illicit commerce while such vessels remain within the said jurisdiction.

" ART. 8. It is also agreed, that the vessels of one of the contracting parties, entering the ports of the other, shall be permitted to discharge a part only of their cargoes, whenever the captain or owner shall desire so to do, and they shall be allowed to depart freely with the remainder, without paying any duties, imposts, or charges, whatsoever, except on that part which shall have been landed, and which shall be marked and noted on the list or manifest containing the enumeration of the merchandise which the vessel ought to have on board, and which list ought always to be presented, without reservation, to the





Resolution test chart showing patterns of vertical and horizontal lines with numerical values ranging from 1.0 to 4.0.



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representations of this individual. We have already stated, that the property, the object of this controversy, was placed

officers of the customs at the place where the vessel shall have arrived; and nothing shall be paid on the part of the cargo which the vessel takes away; and the said vessel may proceed therewith to any other port or ports in the same country, into which vessels of the most favoured nations are permitted to enter, and there dispose of the same; or the said vessel may depart therewith to the ports of any other country. It is, however, understood, that the duties, imposts, or charges, which are payable on the vessel itself, ought to be paid at the first port where it breaks bulk and discharges a part of the cargo, and that no such duties or impositions shall be again demanded in the ports of the same country where the said vessel may thereafter enter, except the inhabitants of the country be subjected to further duties in the same circumstances.

"ART. 9. The citizens or subjects of one of the contracting parties, shall enjoy in the ports of the other, as well for their vessels as for their merchandise, all the rights and privileges of entrepot which are enjoyed by the most favoured nations in the same ports.

"ART. 10. Regulations in case of shipwreck.

"ART. 11. It is agreed that vessels arriving direct from the United States, and a port under the dominion of his Majesty the King of Sweden and Norway, or from the ports of his said Majesty in Europe at a port of the United States, furnished with a certificate of health from the competent health officer of the port whence they took their departure, certifying that no malignant or contagious disease existed at that port, shall not be subjected to any other quarantine than such as shall be necessary for the visit of the health officer of the port at which they may have arrived; but shall, after such visit, be permitted immediately to enter and discharge their cargoes: Provided, always, that there may not be found any person on board who has been, during the voyage, afflicted with a malignant or contagious disease, and that the country from which the vessel comes may not be so generally regarded at the time as infected, or suspected, that it has been previously necessary to issue a regulation by which all vessels coming from that country are regarded as suspected, and subjected to quarantine.

"ART. 12. The treaty of amity and commerce concluded at Paris, in 1783, by the Plenipotentiaries of the United States and of his Majesty the King of Sweden, is renewed and put in force by the present treaty, in respect to all which is contained in the second, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth,



under temporary sequestration, in June 1810, by the French, and was shortly after transferred to Sweden.

"None of the nations, whose dominions border on the Baltic, ever committed, in relation to the United States, nor it is believed in relation to other friendly nations, any act similar to that, for which the undersigned has been instructed to ask indemnity from Sweden. Of the conduct of Russia and Prussia during the continental system, the United States have no cause to complain, and if Denmark imposed a sequestration towards the close of the year 1809, on American vessels and their cargoes in her ports, that sequestration continued for a few months only, and the American property, subjected to it, was restored, without exception, to the lawful owners. If the United States have now claims on Denmark, it is for the lawless depredations of her privateers and the unjust decision of her tribunals, and not for the confiscation without the

fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-first, twenty-second, twenty-third, and twenty-fifth, articles of the said treaty, as well as the separate articles one, two, four, and five, which were signed the same day by the same plenipotentiaries; and the articles specified shall be considered to have as full force and vigour as if they were inserted word for word: Provided, nevertheless, that the stipulations contained in the articles above mentioned shall always be considered as making no change in the conventions previously concluded with other friendly and allied nations.

"ART. 13. Considering the distance of the respective countries of the two high contracting parties, and the uncertainty that results therefrom in relation to the various events which may take place, it is agreed that a merchant vessel, belonging to one of the contracting parties, and destined to a port supposed to be blockaded at that time of her departure, shall not, however, be captured or condemned for having a first time attempted to enter the said port, unless it may be proved that the said vessel could and ought to have learned, on her passage, that the place in question continued to be in a state of blockade. But vessels which, after having been once turned away, shall attempt a second time, during the same voyage, to enter the same port of the enemy, while the blockade continues, shall be liable to detention and condemnation.

"ART. 14. This treaty to endure for eight years after the exchange of the ratifications, viz. until 25th September 1826."

form of a trial of property, acknowledged to be American, and fairly and regularly entered at her custom houses. Of all the nations, bordering on the Baltic, it was left for Sweden, alone, to receive the duties, and summarily and peremptorily to confiscate the merchandise without suggesting a doubt of its origin or ownership."

—"The Swedish government, forgetting its previous assurances and disregarding the incontrovertible rights of the citizens of the United States and the friendly relations, which had not ceased to subsist between the two countries, advertised that property for sale at Stralsund on the 2d day of August 1811, actually sold it on the 14th day of the same month, and caused the proceeds thereof to be paid into the Swedish royal treasury in Pomerania. These facts, it is believed, will not be contested, for they are supported by documents of acknowledged authenticity. Between the 12th July 1811, the day on which this property was placed at the disposal of the Swedish government, and the second day of the following month, on which it was advertised for sale, there elapsed twenty one days only, a period barely sufficient for deciding on the royal order at Stockholm and for its transmission to Stralsund, and for the preparation and publication of the advertisement. The undersigned is ignorant of the date of that order, but from the considerations, just suggested, it could not well have been issued at a later day than the twentieth of the same month of July, and consequently not more than eight days after the note of the Baron Alquier had announced the complete liberation, on the part of France, of the sequestered property. Whatever might have been the extravagance and versatility of the predominant despotism of the time, it will not be presumed, that the government of the United States will volunteer a belief of a total change of policy in so brief a period, and that, instead of consenting to raise the sequester as so formally and recently announced, it had been capriciously resolved to proceed to immediate confiscation. His Excellency must be aware, that the precise orders, received from the French government during that period, should be produced, and communicated to the American government to obtain its faith in the existence of an inconsistency in its nature so incredible. But neither his Excellency or any other Swedish functionary has attempted to show that any such orders were so received, and the undersigned will now dare to trouble his Excellency with proof, not mere pre-

sumptive, that they are not. A declaration of the Swedish authorities in Pomerania renders it certain that they, at least, acted in complete ignorance of such orders, as well as all French interference on the occasion, and in the full conviction, that the Swedish government at Stockholm had the exclusive control of the transaction. This declaration is contained in the reply of those authorities, on the 9th of August 1811, to a memorial, presented to them on the 6th of that month by certain merchants of Stralsund, on behalf of themselves and of their American constituents. This reply clearly manifests the opinion, which the Swedish Regency in Pomerania entertained of the justice of the object of the memorial, and of the competency of their Sovereign to decide definitively in relation to it. It is, likewise, evident from their engagement to place provisionally the proceeds of the merchandise, claimed in the royal chamber, that they acted independently of all French interference, and that there was no agent of France in their vicinity, whom they felt themselves obliged to consult, or to obey in this proceeding."

These acts were never denied by Sweden, but an attempt was made to throw a different hue over them.

"It is an undisputed fact, that the American vessels in question entered the ports of Pomerania, whilst that province was still under the dominion of Sweden, but scarcely was the French government informed of it, when it gave orders to its agents in Pomerania to demand the seizure and confiscation of these vessels to the benefit of France, alleging, in justification of this violent pretension, the system, called continental, under which France then cloaked her projects of progressive encroachment, menacing all Europe, but which had, notwithstanding, been acceded to by all European powers at peace with the French empire. The imposing force, at that time kept up by France in those countries, left no alternative to the Swedish government, which was reluctantly compelled to acquiesce in her demands. The steps then taken by Sweden with the French government, to obtain a transfer to her of the property, thus confiscated, were prompted by a desire to restore it to the lawful owners, but they proved ineffectual, France, having agreed to transfer on certain conditions only, expressly stipulating, that the proceeds of these cargoes should be immediately

employed in placing Pomerania in a state of defence against the English naval force, which then threatened all the shores of the Baltic."

The Swedish Secretary of State, Count d'Engerstroem, was not unsparing of professions of good will, assurances of love of justice, declarations of frankness and various other diplomatic phrases, of which it has been the lot of American ministers to receive, a mortifying profusion, since the discussion of the claims of this country on certain European governments, and the utility or application of which is never apparent in those cases, where any thing else can be said. This demand was not pressed by the United States in a peremptory manner, but full and distinct notice was given, that it had by no means been abandoned. The amount in discussion was inconsiderable, but the manner of the seizure, sequestration and sale, and the methods employed to delay a proper consideration of the subject leave to those, who impartially and carefully examine it, no other alternative than to consider it as a transaction, admitting neither defence nor justification. Even the King of Sweden appeared to allow, that the claim was a just one, and that indemnity should be made, if he had funds.

"Agreeably to the invitation, above mentioned, I dined yesterday with the King at his country palace of Rosendala. Immediately after dinner, he desired me and Count d'Engerstroem to accompany him into his private apartments. He there, at once, introduced the subject of the claims, and expressed a regret that all the circumstances, connected with that transaction, had not hitherto been communicated to the American government. He observed that these circumstances, he believed, would palliate, if not justify the conduct of Sweden in that transaction, and that they should be immediately addressed to me. He then gave directions to Count d'Engerstroem in conformity with this declaration, and, in doing so, he alluded to an order of the French government, designating the objects to which the proceeds of the American property were to be applied. He added, that he was still disposed to do all he could for the relief of the American sufferers, but that, as he had nothing excepting military stores at his disposal for this object, he

could furnish this relief in articles of that description only. I simply replied, that we could not have expected, that new facts would have been brought forward at this late day, after the earnest manner in which we had so long urged these claims, and that I could hardly believe, I might say hope, that these facts were of a nature to justify the Swedish government and exempt it from all responsibility. I was, however, entirely disposed to give to these facts, whatever they might be, a candid consideration."

In 1818 Mr. Russell left Stockholm, Mr. Hughes remaining as chargé. The claim on Sweden was at last settled by a private agreement, with which, we believe, both parties were satisfied. The United States have, therefore, no points in litigation with that country, no indemnities to seek for spoliation, committed during a period, when the plea of necessity may, truly, be urged for the act, though, by no means, constituting an exemption from the obligation of making compensation.

Sweden has been the first government in Europe to extend to the United States the benefits of a perfect reciprocity in matters of commerce. The trade of that country is not great in amount, though on account of some of the articles of export, it is deservedly considered of importance. In 1821, Sweden proposed to place American vessels in the ports of *Norway* on the footing of national vessels from whatever port arriving, or with whatever cargo laden. This offer embraced a more perfect reciprocity than was allowed by statute, had been inserted in any of our treaties, or was ever made by any other government. The opinion has not been an uncommon one, even in this country, that the ships of the north of Europe could navigate on better terms than our own, from the acknowledged facts, that labour, ship building and subsistence could be obtained at cheaper rates. But it is now evident, that skill, intelligence and enterprise, speedily and with facility, overcome the apparently formidable disadvantages of higher prices, both as to labour and raw material, as labour and raw material form but a small proportion of the value of commodities. The Swedish gov-

ernment may, therefore, have made this proposal, expecting, for the reasons we have given, to undercarry our vessels; but an experience of a few years has already fully demonstrated the inferiority of those natural, or accidental advantages. In June of the same year (1821) the Swedish chargé at Washington, the Baron de Stackelberg, communicated this offer to the government, and soon after a proclamation was issued by the President, securing to Norwegian vessels all the benefits and privileges of the acts of March 1815 and of March 1817, regulating the subject of discriminating duties.

In 1825 Mr. Hughes was transferred to the Hague, and W. C. Somerville of Virginia appointed the same year to succeed him, having died in the course of 1826 at Paris,—John James Appleton of Massachusetts was appointed a chargé at Stockholm. Mr. Appleton negotiated with the Count de Wetterstedt, in the summer of 1827, the treaty, with which we shall terminate the account of our relations with Sweden. This treaty is on the principle of the most entire reciprocity as to vessels on the one hand of the United States, and, on the other, of Sweden, Norway and St. Bartholomews, the only colonial\* possession of Sweden in the West Indies. In this instance, therefore, the United States have succeeded in breaking through the European colonial system, and in obtaining admittance into those settlements on the same terms as into the mother country. This is the second most decided step the commercial system of this country has made, and it establishes the important fact, that the colonial principle is neither invincible nor universal. The ratifications were exchanged in January 1828 at Washington. The stipulations in regard to commerce and navigation will be found in the first 12 articles. This treaty, also, regulated (articles 13 and 14) the appointment,

\* The trade with that Island in the years 1825-26, both arriving and departing, exceeded 4000 tons, and was all done in American vessels.

duties and privileges of consuls. Mr. Appleton and the Baron de Stackelberg continue to remain chargés in Sweden and in this country.\*

\* *"In the name of the Most Holy and Indivisible Trinity.*

"The United States of America and His Majesty the King of Sweden and Norway, equally animated with the desire of extending and consolidating the commercial relations subsisting between their respective Territories, and convinced that this object cannot better be accomplished than by placing them on the basis of a perfect equality and reciprocity, have, in consequence, agreed to enter into negotiation for a new Treaty of Commerce and Navigation; and, to this effect, have appointed plenipotentiaries, to wit: The President of the United States of America, John James Appleton, Chargé d'Affaires of the said States at the Court of his Majesty the King of Sweden and Norway; and His Majesty the King of Sweden and Norway, the Sieur Gustave Count de Wetterstedt, his Minister of State and of Foreign Affairs, Knight Commander of his orders, Knight of the Orders of St. Andrew, St. Alexander Newsky, and St. Ann, of the first class, of Russia; Knight of the Order of the Red Eagle, of the first class, of Prussia; Grand Cross of the Order of Leopold, of Austria; one of the Eighteen of the Swedish Academy; who, after having exchanged their full powers, found in good and due form, have agreed upon the following articles:

"ART. 1. The citizens and subjects of each of the two high contracting parties may, with all security for their persons, vessels and cargoes, freely enter the ports, places and rivers, of the territories of the other, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories; to rent and occupy houses and warehouses for their commerce; and they shall enjoy, generally, the most entire security and protection in their mercantile transactions, on condition of their submitting to the laws and ordinances of the respective countries.

"ART. 2. Swedish and Norwegian vessels, and those of the island of St. Bartholomew, arriving either laden or in ballast, into the ports of the United States of America, from whatever place they may come, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light houses, pilotage and port charges, as well as to the perquisites of public officers, and all other duties or charges of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishment, whatsoever.



"And, reciprocally, the vessels of the United States of America, arriving, either laden or in ballast, in the ports of the kingdom of Sweden and Norway, from whatever place they may come, shall be treated on their entrance, during their stay, and at their departure, upon the same footing as national vessels coming from the same place, with respect to the duties of tonnage, light houses, pilotage and port charges, as well as to the perquisites of public officers, and all other duties or charges, of whatever kind or denomination, levied in the name, or to the profit of the government, the local authorities, or of any private establishment whatsoever.

"ART. 3. All that may be lawfully imported into the United States of America, in vessels of the said States, may also be thereinto imported in Swedish and Norwegian vessels, and in those of the island of St. Bartholomew, from whatever place they may come, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishments whatsoever, than if imported in national vessels.

"And, reciprocally, all that may be lawfully imported into the kingdoms of Sweden and Norway, in Swedish and Norwegian vessels, or in those of the island of St. Bartholomew, may also be thereinto imported in vessels of the United States of America, from whatever place they may come, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishments whatsoever, than if imported in national vessels.

"ART. 4. All that may be lawfully exported from the United States of America, in vessels of the said States, may also be exported therefrom in Swedish and Norwegian vessels, or in those of the island of St. Bartholomew, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishments whatsoever, than if exported in national vessels.

"And, reciprocally, all that may be lawfully exported from the kingdoms of Sweden and Norway, in Swedish and Norwegian vessels, or in those of the island of St. Bartholomew, may also be exported therefrom in vessels of the United States of America, without paying other or higher duties, or charges, of whatever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishments whatsoever, than if exported in national vessels.

"ART. 5. The stipulations contained in the three preceding articles, are, to their full extent, applicable to the vessels of the United States

of America, proceeding, either laden, or not laden, to the colony of St. Bartholomew, in the West Indies, whether from the ports of the kingdoms of Sweden and Norway, or from any other place whatsoever; or proceeding from the said colony, either laden or not laden, whether bound for Sweden or Norway, or for any other place whatsoever.

"ART. 6. It is expressly understood that the foregoing second, third and fourth articles, are not applicable to the coastwise navigation from one port of the United States of America, to another port of the said States; nor to the navigation from one port of the kingdoms of Sweden or of Norway to another, nor to that between the two latter countries; which navigation each of the two high contracting parties reserves to itself.

"ART. 7. Each of the two high contracting parties engages not to grant in its purchases, or in those which might be made by companies or agents, acting in its name, or under its authority, any preference to importations made in its own vessels, or in those of a third Power, over those made in the vessels of the other contracting party.

"ART. 8. The two high contracting parties engage not to impose upon the navigation between their respective territories, in the vessels of either, any tonnage or other duties of any kind or denomination, which shall be higher, or other than those which shall be imposed on every other navigation, except that which they have reserved to themselves, respectively, by the sixth article of the present treaty.

"ART. 9. There shall not be established, in the United States of America, upon the products of the soil or industry of the kingdoms of Sweden and Norway, or of the island of St. Bartholomew, any prohibition or restriction of importation or exportation, or any duties of any kind or denomination whatsoever, unless such prohibitions, restrictions and duties, shall, likewise, be established upon articles of like nature, the growth of any other country.

"And, reciprocally, there shall not be established in the kingdoms of Sweden and Norway, nor in the island of St. Bartholomew, on the products of the soil or industry of the United States of America, any prohibition or restrictions of importation or exportation, nor any duties of any kind or denomination whatsoever, unless such prohibitions, restrictions and duties, be likewise established upon articles of like nature, the growth of the island of St. Bartholomew, or of any other place, in case such importation be made into, or from, the kingdoms of Sweden and Norway; or of the kingdoms of Sweden and Norway, or of any other place, in case such importation or exportation be made into, or from, the island of St. Bartholomew.

"ART. 10. All privileges of transit, and all bounties and drawbacks

which may be allowed within the territories of one of the high contracting parties, upon the importation or exportation of any article whatsoever, shall, likewise, be allowed on the articles of like nature, the products of the soil or industry of the other contracting party, and on the importations and exportations made in its vessels.

"ART. 11. The citizens or subjects of one of the high contracting parties, arriving with their vessels on the coasts belonging to the other, but not wishing to enter the port, or after having entered therein, not wishing to unload any part of their cargo, shall be at liberty to depart and continue their voyage, without paying any other duties, imposts, or charges, whatsoever, for the vessel and cargo, than those of pilotage, wharfage, and for the support of light houses, when such duties shall be levied on national vessels in similar cases. It is understood, however, that they shall always conform to such regulations and ordinances concerning navigation, and the places and ports which they may enter, as are, or shall be, in force with regard to national vessels; and that the custom house officers shall be permitted to visit them, to remain on board, and to take all such precautions as may be necessary to prevent all unlawful commerce, as long as the vessels shall remain within the limits of their jurisdiction.

"ART. 12. It is further agreed, that the vessels of one of the high contracting parties, having entered into the ports of the other, will be permitted to confine themselves to unlading such part only of their cargoes, as the captain or owner may wish, and that they may freely depart with the remainder, without paying any duties, imposts, or charges whatsoever, except for that part which shall have been landed, and which shall be marked upon, and erased from, the manifest exhibiting the enumeration of the articles with which the vessel was laden; which manifest shall be presented entire at the Custom House of the place where the vessel shall have entered. Nothing shall be paid on that part of the cargo which the vessel shall carry away, and with which it may continue its voyage, to one, or several other ports of the same country, there to dispose of the remainder of its cargo, if composed of articles whose importation is permitted, on paying the duties chargeable upon it; or it may proceed to any other country. It is understood, however, that all duties, imposts, or charges whatsoever, which are, or become chargeable upon the vessels themselves, must be paid at the first port where they shall break bulk, or unlade part of their cargoes; but that no duties, imposts, or charges, of the same description, shall be demanded anew in the ports of the same country, which such vessels, might, afterwards, wish to enter, unless national vessels be, in similar cases, subject to some ulterior duties.

"ART. 13. Each of the high contracting parties grants to the other,

the privilege of appointing, in its commercial ports and places, consuls, vice consuls, and commercial agents, who shall enjoy the full protection, and receive every assistance necessary for the due exercise of their functions; but it is expressly declared, that, in case of illegal or improper conduct, with respect to the laws or government of the country in which said consuls, vice consuls, or commercial agents shall reside, they may be prosecuted and punished conformably to the laws, and deprived of the exercise of their functions by the offended government, which shall acquaint the other with its motive for having thus acted; it being understood, however, that the archives and documents relative to the affairs of the consulate shall be exempt from all search, and shall be carefully preserved under the seals of the consuls, vice consuls, or commercial agents, and of the authority of the place where they may reside.

"The consuls, vice consuls, commercial agents, or the persons duly authorized to supply their places, shall have the right, as such, to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews, or of the captain, should disturb the order or tranquillity of the country; or the said consuls, vice consuls, or commercial agents should require their assistance to cause their decisions to be carried into effect or supported. It is, however, understood, that this species of judgment, or arbitration, shall not deprive the contending parties of the right they have to resort, on their return, to the judicial authority of their country.

"ART. 14. The said consuls, vice consuls, or commercial agents, are authorized to require the assistance of the local authorities, for the arrest, detention and imprisonment, of the deserters from the ships of war and merchant vessels of their country; and, for this purpose, they shall apply to the competent tribunals, judges and officers, and shall, in writing, demand said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews, and on this reclamation being thus substantiated, the surrender shall not be refused.

"Such deserters, when arrested, shall be placed at the disposal of the said consuls, vice consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who claim them, in order to be sent to the vessels to which they belonged, or to others of the same country. But, if not sent back within the space of two months, reckoning from the day of their arrest, they shall be set at liberty, and shall not be again arrested for the same cause.

"It is understood, however, that, if the deserter should be found to have committed any crime or offence, his surrender may be delayed, until the tribunal before which the case shall be depending, shall have pronounced its sentence, and such sentence shall have been carried into effect.

"ART. 15. In case any vessel of one of the high contracting parties shall have been stranded or shipwrecked, or shall have suffered any other damage on the coasts of the dominions of the other, every aid and assistance shall be given to the persons shipwrecked in danger, and passports shall be granted to them to return to their country. The shipwrecked vessels and merchandise, or their proceeds, if the same shall have been sold, shall be restored to their owners, or to those entitled thereto, if claimed within a year and a day, upon paying such costs of salvage as would be paid by national vessels in the same circumstances; and the salvage companies shall not compel the acceptance of their services, except in the same cases, and after the same delays, as shall be granted to the captains and crews of national vessels. Moreover, the respective governments will take care that these companies do not commit any vexatious or arbitrary acts.

"ART. 16. It is agreed that vessels arriving directly from the United States of America, at a port within the dominions of his majesty the king of Sweden and Norway, or from the territories of his said majesty in Europe, at a port of the United States, and provided with a bill of health granted by an officer having competent power to that effect, at the port whence such vessel shall have sailed, setting forth that no malignant or contagious diseases prevailed in that port, shall be subjected to no other quarantine than such as may be necessary for the visit of the health officer of the port where such vessel shall have arrived; after which said vessels shall be allowed immediately to enter and unload their cargoes; provided always, that there shall be on board no person who, during the voyage, shall have been attacked with any malignant or contagious diseases; that such vessels shall not, during their passage, have communicated with any vessel liable, itself, to undergo a quarantine; and that the country whence they came shall not, at that time, be so far infected or suspected, that, before their arrival an ordinance had been issued, in consequence of which all vessels coming from that country should be considered as suspected, and consequently subject to quarantine.

"ART. 17. The second, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-first, twenty-second, twenty-third and twenty-fifth articles of the treaty of amity and commerce

concluded at Paris on the third of April, one thousand seven hundred eighty-three, by the plenipotentiaries of the United States of America, and of his majesty the king of Sweden, together with the first, second, fourth and fifth separate articles, signed on the same day by the same plenipotentiaries, are revived, and made applicable to all the countries under the dominion of the present high contracting parties, and shall have the same force and value as if they were inserted in the context of the present treaty. It being understood that the stipulations contained in the articles above cited, shall always be considered as in no manner affecting the conventions concluded by either party with other nations, during the interval between the expiration of the said treaty of one thousand seven hundred eighty-three, and the revival of said articles by the treaty of commerce and navigation, concluded at Stockholm by the present high contracting parties, on the fourth of September, one thousand eight hundred and sixteen.

"ART. 18. Considering the remoteness of the respective countries of the two high contracting parties, and the uncertainty resulting therefrom with respect to the various events which may take place, it is agreed that a merchant vessel belonging to either of them, which may be bound to a port supposed, at the time of its departure, to be blockaded, shall not, however, be captured or condemned for having attempted a first time, to enter said port, unless it can be proved that said vessel could, and ought to have learned, during its voyage, that the blockade of the place in question still continued. But all vessels which, after having been warned off once, shall, during the same voyage, attempt a second time to enter the same blockaded port, during the continuance of said blockade, shall then subject themselves to be detained and condemned.

"ART. 19. The present treaty shall continue in force for ten years, counting from the day of the exchange of the ratifications, and if, before the expiration of the first nine years, neither of the high contracting parties shall have announced, by an official notification to the other, its intention to arrest the operation of said treaty, it shall remain binding for one year beyond that time, and so on, until the expiration of the twelve months which will follow a similar notification, whatever the time at which it may take place.

"ART. 20. The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate, and by his majesty the king of Sweden and Norway, and the ratifications shall be exchanged at Washington within the space of nine months from the signature, or sooner if possible.

"In faith whereof, the respective plenipotentiaries have signed the



present treaty, by duplicates, and have affixed thereto the seals of their arms. Done at Stockholm, the fourth of July, in the year of grace one thousand eight hundred and twenty-seven.

"J. J. APPLETON, [L. S.]

"G. COUNT DE WETTERSTEDT, [L. S.]

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"SEPARATE ARTICLE.

"Certain relations of proximity and ancient connexions having led to regulations for the importation of the products of the kingdoms of Sweden and Norway into the Grand Duchy of Finland, and that of the products of Finland into Sweden and Norway, in vessels of the respective countries, by special stipulations of a treaty still in force, and whose renewal forms, at this time, the subject of a negotiation between the courts of Sweden and Norway and Russia, said stipulations being in no manner, connected with the existing regulations for foreign commerce in general, the two high contracting parties, anxious to remove from their commercial relations all kinds of ambiguity or motives of discussion, have agreed that the eighth, ninth and tenth articles of the present treaty shall not be applicable either to the navigation and commerce above mentioned, nor, consequently, to the exceptions in the general tariff of custom house duties, and in the regulations of navigation resulting therefrom, nor to the special advantages which are, or may be granted to the importation of tallow and candles from Russia, founded upon equivalent advantages granted by Russia on certain articles of importation from Sweden and Norway.

"The present separate article shall have the same force and value as if it were inserted, word for word, in the treaty signed this day, and shall be ratified at the same time.

"In faith whereof, we, the undersigned, by virtue of our respective full powers, have signed the present separate article, and affixed thereto the seals of our arms.

"Done at Stockholm, the fourth of July, one thousand-eight hundred and twenty-seven.

"J. J. APPLETON, [L. S.]

"G. COUNT DE WETTERSTEDT, [L. S.]

END OF VOLUME FIRST.



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